

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF MARYLAND

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 vs. )  
 )  
 GERALD JOHNSON, et al., )  
 )  
 Defendant. )

**CRIMINAL NO.:** JKB-16-0363  
**Jury Trial:** Volume 6

Transcript of Proceedings  
Before the Honorable James K. Bredar  
Thursday, November 30th, 2017  
Baltimore, Maryland

For the Plaintiff:

Peter J. Martinez, AUSA

Christina A. Hoffman, AUSA

For Defendant Gerald Johnson:

Paul F. Enzinna, Esquire

Jeffrey B. O'Toole, Esquire

For Defendant Kenneth Jones:

Alan R.L. Bussard, Esquire

For Defendant Marquise McCants:

John R. Francomano, III, Esquire

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## P R O C E E D I N G S

THE COURT: Good morning. Be seated, please. All right. We're ready to start our trial day, but I understand there's some issues that counsel wanted to raise outside the hearing of the jury. Is that right, Mr. Martinez?

MR. MARTINEZ: Yes, Your Honor. There are two and I thought it was more efficient to address them now, then while on the fly when the jury is here. Our second witness this morning after a witness who I believe will take only five or ten minutes is Sergeant James Lloyd from BPD Homicide. He was the primary investigator on the murder of Gregory Rochester about which Mr. Meadows testified yesterday.

And we got a request from Mr. Bussard this morning to provide him with a note from Detective Lloyd's file regarding a conversation he had with an assistant state's attorney nine or ten years ago about Christopher Meadows. And there's a note in the file to the effect that because a related shooting was nolle prossed, AUSA Giblin believed at the time that Meadows was less credible. And we want to object preemptively to any use of Detective Lloyd, or Sergeant Lloyd now, as a vehicle for presenting the jury with an assistant state's attorney's mental impression about a cooperating witness ten years ago.

THE COURT: You're not going to -- you're not attempting to offer anything like that.

1 MR. BUSSARD: Here's where it came up.

2 THE COURT: You're entitled to have it.

3 MR. BUSSARD: I'm happy to show it.

4 THE COURT: I don't need it.

5 MR. BUSSARD: Here's my point: I'm reading the  
6 transcript from Mr. Jones's state trial.

7 THE COURT: Yes.

8 MR. BUSSARD: I see a question to Sergeant Lloyd  
9 that says, did you write in your progress notes on so-and-so  
10 date, Christopher Meadows appears to be less credible in his  
11 witness information concerning suspects involved. That was  
12 the quote. That's -- now, when I tried to find this and I  
13 went through the progress notes, it's blacked out. I don't  
14 know what's under there. So this sounds like *Brady* to me, the  
15 transcript.

16 THE COURT: Well, what does the note say?

17 MR. BUSSARD: I don't know because I --

18 MR. MARTINEZ: We just said it, so --

19 MR. BUSSARD: We don't have it.

20 MR. MARTINEZ: The initial version we produced had  
21 been redacted because it identified Mr. Meadows, who was an  
22 as-yet undisclosed witness. We unredacted it. Mr. Bussard  
23 requested it at 7:00 or so this morning. At 7:24, five  
24 minutes later, I sent an e-mail with the unredacted version,  
25 which he --

1 THE COURT: Oh, okay. Well, what's the unredacted  
2 version say?

3 MR. BUSSARD: I don't know. We haven't gotten it.  
4 Mr. O'Toole -- we have not seen it.

5 THE COURT: Oh, well, let's read it out in open  
6 court.

7 MR. BUSSARD: For whatever reason, it never came. I  
8 got an e-mail, but there's no attachment to it.

9 MR. MARTINEZ: I can open it on my phone and show  
10 you all.

11 MR. BUSSARD: Mr. O'Toole's -- I guess I turned my  
12 phone off.

13 THE COURT: All right. Well, what does it say,  
14 what's the redacted part say?

15 MR. MARTINEZ: Your Honor, hold on.

16 MR. BUSSARD: It is not a quote from -- wait a  
17 minute. Christopher Meadows appears less credible in his  
18 witness information concerning the suspects involved,  
19 according to AUSA Giblin. That's what I didn't know.

20 THE COURT: Okay. So end of issue?

21 MR. BUSSARD: It was abundance of caution --

22 THE COURT: It's no problem. I wanted to make sure  
23 the defense is not going to try to offer that as  
24 cross-examination of Detective Lloyd; right?

25 MR. BUSSARD: I was, but now I know the whole

1 story.

2 THE COURT: Now that you know what it says, that  
3 it's a recounting of what somebody else said, it's hearsay,  
4 hearsay, hearsay.

5 MR. BUSSARD: No, I don't have an objection I -- I  
6 mean, I would like to --

7 THE COURT: I'm in the business of solving problems,  
8 not writing law review articles. We're past it, we don't have  
9 a problem. Next issue.

10 MR. MARTINEZ: Ms. Hoffman has an issue regarding  
11 our expert this morning.

12 THE COURT: Expert.

13 MS. HOFFMAN: Firearms examination expert  
14 Sandra Bohlen will be testifying today and I talked with her  
15 earlier this week about the formulation that Your Honor ruled  
16 she should use in making -- explaining her conclusions with  
17 respect to firearms evidence.

18 THE COURT: Right.

19 MS. HOFFMAN: And that she not express any greater  
20 certainty than a reasonable degree of ballistic certainty.

21 THE COURT: Forensic ballistic certainty.

22 MS. HOFFMAN: And she wrote back to me and I wanted  
23 to read it for Your Honor. She says quote, "We do not use  
24 verbiage to a reasonable degree of ballistic certainty.  
25 Really what I do is not considered ballistics at all, but

1 rather, firearms identification. Ballistics is the study of a  
2 bullet in flight. Since 2007, we have changed the way we word  
3 our reporting. Nothing has technically changed. We just  
4 wanted to ensure greater clarity for our customers who receive  
5 the report. The reports now include the words 'sufficient  
6 agreement,' which is necessary for an identification and  
7 include the definition of sufficient agreement."

8 And then she provided the definition of sufficient  
9 agreement. And I'm going to read that too. The definition  
10 is, "sufficient agreement is related to the significant  
11 duplication of random tool marks as evidenced by a pattern or  
12 combination of patterns of surface contours. Sufficient  
13 agreement exists between two tool marks, means that the  
14 agreement is of a quantity and quality that the likelihood  
15 another tool could have made the mark is so remote as to be  
16 considered a practical impossibility."

17 THE COURT: Yes, well, I won't permit that. That  
18 exceeds the scope of the science -- the capability of the  
19 science, as far as the Court is concerned. I doubt the view  
20 expressed by Judge Grimm, so make sure she doesn't exceed  
21 that. Let's get going with this jury. Anything else?

22 MR. MARTINEZ: No.

23 THE COURT: Okay. Let's bring them in. Anything  
24 that implies identification or certainty is what's  
25 problematic. She needs to understand that -- well, she

1 doesn't need to understand anything. I just want the  
2 government to understand where the line is. A reasonable  
3 degree of certainty within the scope of that science or  
4 profession is what will allow. It's that a test was passed or  
5 that an identification is made that is not allowed. Somehow  
6 that concept is -- well, she's going to have to conform to  
7 that or I won't permit it. The expert is not the final  
8 arbiter on the science, the Court is. That's where the  
9 tension lies. And the expert has to conform their testimony  
10 to what -- stop them -- stop. The principle is that the  
11 expert has to conform her testimony to what the standard is as  
12 set by the Court, not vice versa. That's what's problematic.  
13 The second part of this that is troubling is, this was  
14 addressed pretrial. Okay. Now let's bring them in.

15 (Jury entered the courtroom.)

16 THE COURT: Be seated, please. Good morning, ladies  
17 and gentlemen. We're ready to continue with the government's  
18 case in chief. Mr. Martinez, you may call your next  
19 witness.

20 MR. MARTINEZ: Your Honor, the government calls  
21 Detective Mark Veney of the Baltimore Police Department.

22 THE COURT: Detective Mark Veney.

23 MR. MARTINEZ: Yes.

24 THE COURT: Thank you. Please come all the way  
25 forward to the front of the courtroom, sir. Stand next to the

1 witness box and face our clerk over here on the other side of  
2 the bench.

3 THE CLERK: Detective, if you would raise your right  
4 hand to be placed under oath.

5 DETECTIVE MARK VENEY  
6 called as a witness, being first duly sworn, was examined and  
7 testified as follows:

8 THE WITNESS: I do.

9 THE CLERK: Thank you. You may enter the witness  
10 box and watch your step. And Detective, if you need to adjust  
11 the microphone, speak directly into the microphone. State  
12 your first and last name and spell your first and last name.

13 THE WITNESS: My name is Detective Mark Veney. My  
14 first name is spelled M-a-r-k; my last name is spelled V, as  
15 in Victor, e-n-e-y.

16 THE CLERK: Thank you, sir.

17 THE COURT: Your witness.

18 DIRECT EXAMINATION

19 BY MR. MARTINEZ:

20 Q Detective Veney, good morning.

21 A Good morning.

22 Q Can you tell the ladies and gentlemen of the jury where  
23 you work?

24 A I work for the Baltimore City Police Department homicide  
25 unit.



1 Q And what is your rank or title at BPD?

2 A Detective.

3 Q How long have you been with homicide?

4 A I've been with homicide -- I'm serving in my 16th year  
5 now.

6 Q And approximately how many homicides would you say you've  
7 investigated over the course of your career with BPD?

8 A As a primary detective, I would say anywhere from between  
9 80 and 100. And as a secondary detective, meaning assisting  
10 with my partner, somewhere in the hundreds.

11 Q So roughly how many homicides per year do you  
12 investigate?

13 A On average anywhere between five to six per year. And  
14 that depends on the rate of homicides that we have in a given  
15 year.

16 Q Detective, I want to direct your attention to the early  
17 morning hours of July 20th, 2005. Were you working and on  
18 duty at the time?

19 A Yes, I was.

20 Q Did there come a time early that morning when you were  
21 asked to go to the scene of a homicide?

22 A Yes. I was asked to go to the scene of a homicide in the  
23 200 block of East 22nd Street. I was on the midnight shift  
24 that particular day.

25 Q And I want to show you what's already come into evidence

1 as Government's Exhibit GM 15. Do you recognize that  
2 location, Detective?

3 A Yes, I do.

4 Q What do you recognize that to be?

5 A This is the site of the homicide scene.

6 Q Do you recall approximately what time you arrived on the  
7 scene?

8 MR. BUSSARD: Your Honor, I hate to interrupt, but  
9 our monitor's not working.

10 THE COURT: Okay. See if the miracle worker can  
11 work a miracle. Ms. Panas, is your monitor working?

12 MS. PANAS: It was.

13 MR. BUSSARD: Can I sit back there?

14 THE CLERK: I'm going to turn them off and back on.  
15 Can the jury see?

16 THE COURT: Monitors off? Blank?

17 THE CLERK: Can everybody see?

18 MR. BUSSARD: Yes, thank you very much.

19 THE COURT: Amazing how that works.

20 MR. MARTINEZ: May I continue, Your Honor?

21 THE COURT: You may.

22 Q (BY MR. MARTINEZ) Detective, I was asking you,  
23 approximately what time did you arrive at the scene of this  
24 homicide?

25 A I arrived there at approximately 2:49 a.m.

1 Q When you arrived at the scene, was anyone else present?

2 A The uniformed officer, Officer Sharpley, he was present  
3 and paramedics had already left the scene with the victim.

4 Q So the victim was no longer present?

5 A That's correct.

6 Q Could you show us roughly where on this map -- well,  
7 actually, let me do it this way. I'll show you a page from  
8 what's been marked as Government's Exhibit P, as in Paul,  
9 HCS-1.

10 A Yes.

11 Q What are we looking at there, Detective?

12 A This is the site of the crime scene. You can see the  
13 pool of blood where the victim was found when the uniformed  
14 officer arrived on the scene and where the paramedics  
15 retrieved his body from.

16 Q All right. So the pool of blood is here on the left;  
17 correct?

18 A That's correct.

19 Q And I just want to put on the screen GM 15, which you  
20 just looked at and I want to ask you to point out where on  
21 GM 15 that pool of blood was.

22 A Right over -- just above -- well, it's kind of hard to  
23 put it here, but right in this area near where the trees  
24 are.

25 THE COURT: You can mark with your finger, it will

1 show up.

2 A Can you go back to the first exhibit?

3 Q (BY MR. MARTINEZ) Sure.

4 A You can almost see the tree right there, okay. So right  
5 here where this tree is, is in this area where the victim's  
6 body was found. This side street --

7 THE COURT: So we're not seeing -- try to draw a  
8 circle around the area you're talking about, touch with your  
9 finger.

10 THE WITNESS: Is it working?

11 THE COURT: Ms. Powell. Just a second, Detective.  
12 You'll have to move out of her way for a second.

13 THE CLERK: I'm just resetting the annotation  
14 system.

15 THE WITNESS: Is it working?

16 THE CLERK: No, I don't see it.

17 THE COURT: Just randomly put your finger on the  
18 screen and run your finger up and down. It's not working.  
19 All right. Call IT, meanwhile, Mr. Martinez --

20 Q (BY MR. MARTINEZ) Detective, let's do it this way:  
21 We'll go old school. Can I approach and you can use a pen and  
22 circle the location with the pen?

23 A That's fine, as long as it's okay with the judge.

24 THE COURT: Yes, it is.

25 Q (BY MR. MARTINEZ) If you could just circle roughly where

1 you saw the victim's body and we'll put that on the document  
2 camera.

3 A Okay. In this area.

4 Q For the record, Detective, where my pen is here, just  
5 above that, that's the location you circled; correct?

6 A Yes, that's correct.

7 Q Okay. I'll show you another page from  
8 Government's PHCS 1. What are we looking at here?

9 A That's the -- C, Item C is the pool of blood. And Item B  
10 is the victim's tennis shoes.

11 Q All right. Detective, did you recover any ballistics or  
12 firearms evidence from the scene such as projectiles or  
13 cartridges or casings?

14 A There was no ballistic evidence recovered from the  
15 scene.

16 Q Did you eventually learn the identity of the victim?

17 A Yes. Eventually I learned the identity of the victim.  
18 His name was Dante Jordan, nickname Tata Bug.

19 Q Did you eventually attend the victim's autopsy?

20 A Yes, I did.

21 Q Did you see the victim yourself in the morgue?

22 A Yes.

23 Q I'm going to show you --

24 Counsel, before I do that --

25 I'll show you a page from AP-1. What are we looking at

1 there, Detective?

2 A That's a picture of the victim at the morgue.

3 THE COURT: Counsel, you can approach.

4 (Bench conference on the record.)

5 THE COURT: Okay. Generally speaking, Mr. Martinez,  
6 I didn't warn you about this, but I like to give a jury  
7 advance warning before gruesome photos are going to be shown,  
8 to include autopsy photos, dead remains at crime scenes, that  
9 sort of thing. So -- but I don't want you to do that. I want  
10 to be the source of that. Your having given me a heads up, so  
11 where are we going?

12 MR. MARTINEZ: Well, no further down the road with  
13 this witness, but when Ms. Hoffman puts on Detective Lloyd  
14 there are crime scene photos. We'll make sure she gives you a  
15 head up when she's about to introduce those.

16 THE COURT: Yes, she should just ask to approach the  
17 bench, that will be the signal. Bring up the hard copies to  
18 me, just say, may I approach the bench. I know that's what  
19 you mean. I'll see them and I'll come up with some kind of  
20 appropriate statement to the jury.

21 MR. O'TOOLE: We can address those pictures at that  
22 point at the bench? We can address those pictures at the  
23 bench at that time?

24 THE COURT: If there's going to be an objection with  
25 respect to the evidence in the normal fashion, you should

1 absolutely make your objections and we'll go through that.

2 MR. O'TOOLE: Thank you.

3 THE COURT: And let me just make a record on this  
4 issue, does any defendant have an objection to the Court's  
5 practice of essentially, and I hate this term, but we all know  
6 what it means because we all read the popular press, giving --  
7 is there any objection to the Court giving a trigger warning  
8 to the jury before the gruesome photos are shown?

9 MR. FRANCOMANO: No, Your Honor.

10 MR. BUSSARD: No.

11 MR. O'TOOLE: I don't think so.

12 THE COURT: And this is purely about warning the  
13 jury to protect their sensibilities. This has nothing to do  
14 with admissibility of evidence. You retain all of the normal  
15 rights and procedures that would attain. And I suppose  
16 through this process of -- well, let's do this: When  
17 Ms. Hoffman asks to approach the bench to show the Court the  
18 photos, counsel should all come up. We'll kill two birds with  
19 one stone.

20 MR. MARTINEZ: Understood. Sorry, I didn't know the  
21 policy.

22 (The following proceedings were had in open court.)

23 THE COURT: Next question, Mr. Martinez.

24 Q (BY MR. MARTINEZ) Detective, following the autopsy, did  
25 you conduct an investigation of Mr. Jordan's homicide?

1 A Yes, I did.

2 Q As part of that investigation, did you interview  
3 witnesses?

4 A Yes, I did.

5 Q Did there come a point in time where the trail of your  
6 investigation went cold?

7 A Yes.

8 Q And then directing your attention to late 2013, did there  
9 come a time where you located an actual eyewitness to  
10 Mr. Jordan's homicide?

11 A Yes.

12 Q Who was that?

13 A I located a witness by the name of Christopher Meadows.

14 Q I want to show you Government's Exhibit P, as in Paul,  
15 HI-58. What are we looking at there?

16 A That's Christopher Meadows.

17 Q Detective, did you interview Mr. Meadows regarding what  
18 he saw on the night Jordan was killed?

19 A Yes, I did.

20 MR. MARTINEZ: Your Honor, those are all the  
21 questions we have for Detective Veney.

22 THE COURT: Cross-examination.

23 MR. O'TOOLE: No questions on behalf of  
24 Mr. Jones.

25 THE COURT: Mr. Bussard.



1 MR. BUSSARD: No, Your Honor.

2 THE COURT: Mr. Francomano.

3 MR. FRANCOMANO: No, Your Honor.

4 THE COURT: Thank you, sir, you are excused.

5 THE WITNESS: Thank you.

6 THE COURT: We've consulted with our IT experts and  
7 the advice is to reboot the whole system, but that takes a  
8 while, so we're not going to do that until the morning break.  
9 So between now and the morning break, you'll have to -- to the  
10 extent you want exhibits marked, you'll have to do it in the  
11 fashion you followed previously. Unless you or Ms. Hoffman  
12 tell me that it's going to be extensive, in which case we'll  
13 pause and do the reboot. But how long does that take, four or  
14 five minutes?

15 THE CLERK: Yeah, it shouldn't take long.

16 MR. MARTINEZ: Let me just confer with Ms. Hoffman  
17 and ask her what she --

18 THE COURT: Yes.

19 MR. MARTINEZ: I understand there won't be much in  
20 the way of annotation, so I think we can make do until the  
21 break.

22 THE COURT: Thank you.

23 MS. HOFFMAN: Your Honor, the government calls  
24 Sergeant James Lloyd.

25 THE COURT: Mr. Lloyd, please come forward. Stand

1 right by our witness box here and face our clerk.

2 THE CLERK: Sir, if you would please raise your  
3 right hand to be placed under oath.

4 SERGEANT JAMES LLOYD  
5 called as a witness, being first duly sworn, was examined and  
6 testified as follows:

7 THE WITNESS: Yes, ma'am, I do.

8 THE CLERK: Thank you. You may enter the witness  
9 box and watch your step. And if you would please speak  
10 directly into the microphone, state your first and last name  
11 and spell your first and last name.

12 THE WITNESS: James Lloyd. First name, J-a-m-e-s;  
13 last name, L-l-o-y-d.

14 THE CLERK: Thank you.

15 THE COURT: Your witness, ma'am.

16 DIRECT EXAMINATION

17 BY MS. HOFFMAN:

18 Q Good morning, Sergeant Lloyd.

19 A Good morning, ma'am.

20 Q With which law enforcement agency are you employed?

21 A The Baltimore City Police Department.

22 Q And what's your rank and title?

23 A Detective sergeant.

24 Q How long have you worked with the Baltimore Police  
25 Department?

1 A 18 years.

2 Q And what unit of the BPD are you in?

3 A The homicide section, ma'am.

4 Q How long have you been with homicide?

5 A About 15 and a half years.

6 Q Approximately how many homicides would you say you've  
7 investigated over the course of your career?

8 A Just about 100.

9 Q Approximately how many homicides per year do you  
10 investigate?

11 A I'd say too many, 30 to 45.

12 Q Directing your attention to the early morning hours of  
13 January 9th, 2007, were you working and on duty on that day?

14 A As a detective, yes, ma'am.

15 Q Did there come a time when you were asked to respond to  
16 the scene of a homicide?

17 A Yes, ma'am.

18 Q Where were you asked to go?

19 A I believe it was 221 East 25th Street in Baltimore  
20 City.

21 Q And about what time of day did that call come in?

22 A Early morning hours, ma'am, between 5:16 to 5:22 a.m.

23 Q Was the victim present on the scene when you arrived?

24 A Yes, ma'am, he was.

25 Q And what kind of building is 221 East 25th Street?

1 A It's a multi-unit dwelling, ma'am, with a commonplace  
2 area on the first floor, I do believe.

3 Q Were photographs taken of the crime scene?

4 A Yes, ma'am, by a crime lab technician with Baltimore  
5 City.

6 MS. HOFFMAN: Your Honor, may I approach?

7 THE COURT: Yes. Counsel.

8 (Bench conference on the record.)

9 THE COURT: How many you got?

10 MS. HOFFMAN: There's a whole bunch. We don't  
11 intend to offer any actual autopsy photos of this victim, just  
12 the crime scene photos. We will have a witness testify later  
13 in the proceeding that he heard the defendant Gerald Johnson  
14 describe Mr. Rochester's brains as looking like spaghetti  
15 sauce.

16 THE COURT: Okay.

17 MS. HOFFMAN: So we do want to present pictures, as  
18 gruesome as they are, to corroborate that witness's account.

19 THE COURT: Okay. So I have before me -- are these  
20 individual --

21 MS. HOFFMAN: No, they're all one.

22 THE COURT: That's not going to work. How do I  
23 discriminate if I don't have them separately marked?

24 MR. MARTINEZ: We can bring up another set of  
25 stickers.

1 THE COURT: How about this, PHCS 2, they're all in  
2 that category, and then give them hyphens and letters.

3 MS. HOFFMAN: Sure.

4 THE COURT: All right. Do that quickly.  
5 Ms. Powell, you're going to need a separate sheet somehow to  
6 record this. The government can get it prepared for you  
7 somehow overnight so that it otherwise dovetails into your  
8 exhibit list. But you're going to need an informal sheet that  
9 you write out for yourself to keep track of this today. And  
10 specially considering the real possibility that some photos  
11 might come in and some might be excluded. You need a record  
12 of that. I would say just handwrite it on a pad.

13 (Pause in the proceedings.)

14 THE COURT: Okay. We're back on the record. Okay.  
15 I have -- so we've done it with numbers, is that how you did  
16 it?

17 MR. MARTINEZ: Yes, 2-1, 2-2, et cetera.

18 THE COURT: PHC 2-1, I'll be referring to these by  
19 2-1, for instance. So are you proposing, with proper  
20 foundation, to offer all of these exhibits, Ms. Hoffman?

21 MS. HOFFMAN: I mean, I'd like to offer -- some of  
22 them are redundant, honestly, so I don't need to offer all of  
23 them.

24 THE COURT: Sort them.

25 MS. HOFFMAN: I would like to offer this one.

1 THE COURT: Make your two stacks right now and then  
2 we'll go through them, all of the ones that you want.

3 (Pause in the proceedings.)

4 THE COURT: Okay. Counsel, for the record, the  
5 government proposes to offer the following exhibits in  
6 evidence: PHCS 2-1, I'm going to go through them all first.  
7 You don't need to interpose your objections yet. First, we're  
8 going to go through them and see them as a set and then we'll  
9 go through them one by one. 2-1, 2-2, 2-3, 2-5, 2-9, 2-11,  
10 2-12, 2-15.

11 MR. MARTINEZ: Correct.

12 THE COURT: Is your witness going to say that's a  
13 shell casing?

14 MS. HOFFMAN: Uh-huh.

15 THE COURT: 2-16, 2-18, 2-19, 2-20, and 2-21. Here  
16 we go, 2-1.

17 MR. O'TOOLE: No objection.

18 MR. BUSSARD: No objection.

19 MR. FRANCOMANO: No objection.

20 THE COURT: 2-2.

21 MR. O'TOOLE: No objection.

22 MR. BUSSARD: No objection.

23 MR. FRANCOMANO: No objection.

24 THE COURT: 2-3.

25 MR. O'TOOLE: No objection.

1 MR. BUSSARD: No objection.

2 MR. FRANCOMANO: No objection.

3 THE COURT: 2-5.

4 MR. O'TOOLE: No objection.

5 MR. BUSSARD: No objection.

6 MR. FRANCOMANO: No objection.

7 THE COURT: 2-9.

8 MR. O'TOOLE: Objection.

9 THE COURT: What's the objection?

10 MR. O'TOOLE: It's redundant to five. It shows  
11 body -- shows a different perspective of the room. It's still  
12 redundant, we have a dead body on the floor.

13 MS. HOFFMAN: Can I see the other one, compare it?  
14 I was trying to show different angles.

15 MR. O'TOOLE: Virtually the same picture.

16 MS. HOFFMAN: That's fine, we can just use this one  
17 then.

18 THE COURT: 2-5 is withdrawn?

19 MR. O'TOOLE: What -- it's --

20 THE COURT: Hold on, let me see what her position  
21 is.

22 MS. HOFFMAN: Let's use this one. Yes, we'll use  
23 this one.

24 THE COURT: 2-9 has been withdrawn. Defendant's  
25 position with respect to 2-5?

1 MR. O'TOOLE: We have no objection.

2 THE COURT: 2-11.

3 MR. O'TOOLE: Objection.

4 MR. BUSSARD: Objection.

5 THE COURT: Same objection?

6 MR. O'TOOLE: Virtually the same objection. We have  
7 a dead body on the floor. This is just a close-up picture of  
8 the dead body on the floor. It's even less useful than the  
9 other picture because it doesn't show anything that they're  
10 talking about in terms of position or anything else. It's  
11 just a dead body on the floor, which we already know is lying  
12 there.

13 THE COURT: Government's position.

14 MS. HOFFMAN: Well, I think it -- so I wanted to  
15 show before the casings had been marked and after the casings  
16 had been marked. This is before they had put the markers up  
17 and it shows -- and it's a close up that shows that he's lying  
18 on his back. And I think that you can see -- well, maybe you  
19 can't see where the casings are. But that was my intent, was  
20 to show before and after the markers were put down.

21 MR. O'TOOLE: The casings -- the casings with  
22 respect to where they are on the body, I submit that it  
23 doesn't make any difference at all. The man is dead and  
24 they're going to show is there casings on the floor.

25 THE COURT: I don't think there's a strong argument



1 either way. I don't find the photo to be particularly  
2 gruesome other than the fact that it clearly depicts someone  
3 who is deceased. But there's no blood, there's no gore, that  
4 is evident. And the individual clearly looks to be deceased.  
5 But in the context in which we are proceeding in this trial, I  
6 do not find Exhibit 2-11 to be unduly inflammatory or that  
7 it's admission would violate Rule 403. That is to say, it  
8 would be more prejudicial than probative. So while it is  
9 somewhat duplicative of other photos that have come in, it  
10 also doesn't strike the Court in context as being terribly  
11 prejudicial. 2-11 will come in provided there's a proper  
12 foundation laid. These are of course preliminary rulings. We  
13 haven't laid the foundation yet. Next exhibit is 2-11.

14 MR. O'TOOLE: We object, Your Honor.

15 THE COURT: All right. So 2-11.

16 MR. O'TOOLE: I'm sorry, Your Honor, 12 is what I  
17 object to.

18 THE COURT: Right.

19 MR. BUSSARD: And object to that also.

20 THE COURT: All three defendants object to 2-12.  
21 Government's position.

22 MS. HOFFMAN: We can take that one out.

23 THE COURT: 2-12 is withdrawn. The next exhibit is  
24 2-15.

25 MR. O'TOOLE: Object.

1 MR. BUSSARD: Objection on behalf of Mr. Jones.

2 THE COURT: Okay. All three defendants object.

3 Mr. O'Toole, you want to argue it?

4 MR. O'TOOLE: Based on Rule 403, based on the  
5 gruesomeness of that picture, the fact that he is certainly  
6 dead, there will be attempted testimony by somebody that it  
7 looked like spaghetti sauce. First of all, it doesn't look  
8 like spaghetti sauce, but second of all, I would suggest that  
9 the spaghetti sauce comment is not in furtherance of the  
10 conspiracy, and therefore, should not come in as hearsay  
11 testimony. And I don't think it adds anything to the picture.  
12 And finally, the jury -- if someone said he was dead with  
13 blood on his face, saying it looked like spaghetti sauce, the  
14 jury can imagine that. The jury does not have to be shown a  
15 picture of a man with his eyes open with bullet holes in his  
16 head and some subject matter on the floor that's grotesque and  
17 gross and ask the Court to keep it out. It's more prejudicial  
18 than probative.

19 THE COURT: Sadly the topic is murder. And the  
20 circumstances of the murder allegedly are a gunshot wound to  
21 the head. In that context, I find it is appropriate to place  
22 before the jury a single gruesome photograph that --

23 MR. O'TOOLE: Can we look at all of them and see --

24 THE COURT: I don't think they're offering any  
25 others.

1 MS. HOFFMAN: That's the very important one because  
2 I think it does corroborate that witness's testimony about  
3 what Gerald Johnson said.

4 MR. O'TOOLE: Can we look at the one prior to that  
5 to see if --

6 THE COURT: I think she already pulled it.

7 MR. O'TOOLE: Maybe the Court had already decided.

8 THE COURT: The government's position is -- let me  
9 see 2-14.

10 MR. MARTINEZ: 2-14.

11 MR. O'TOOLE: No, we need 15 -- you mean 12.

12 MR. MARTINEZ: Ms. Hoffman probably pulled out.

13 MS. HOFFMAN: Your Honor, this picture shows the  
14 casing and it also shows the blood looking much more like  
15 spaghetti sauce.

16 THE COURT: The government withdrew 2-14, and  
17 looking at 2-14, it's a hideously graphic photograph that is  
18 terribly gruesome, also doesn't appear to depict a shell  
19 casing. And so as between the two, the Court's judgment is  
20 that 2-15 is less gruesome than 2-14. So the fact that that  
21 is the -- 2-14 has been taken out of the equation is of some  
22 significance here. So this -- of the truly gruesome photos  
23 that are in this set, I take it that the government is only  
24 intending to offer 2-15.

25 MS. HOFFMAN: Well, yeah, I mean, assuming -- there

1 are a couple others that could be considered gruesome.

2 THE COURT: Well, not on this scale. This is a  
3 photograph that depicts a dead individual, eye open, shell  
4 casing, certainly coagulated blood having drained from the  
5 skull. There's a pinkish material, which the Court suspects  
6 is brain tissue, that is on this carpet. It's a gruesome  
7 photo. I don't see anything else in the set proffered by the  
8 government that is of this scale in terms of the gruesomeness  
9 of the photo.

10 MR. O'TOOLE: Your Honor, if I could just make one  
11 comment.

12 THE COURT: Yes.

13 MR. O'TOOLE: Just because there are only two photos  
14 that are gruesome, and this is in the Court's estimation the  
15 less gruesome of the two, it does not make it appropriate.

16 THE COURT: No, not by itself. I agree with that  
17 analysis, but it's also -- go ahead and finish your  
18 argument.

19 MR. O'TOOLE: Well, I think that -- two things. If  
20 the Court does let it in over objection, over strong  
21 objection, I think the government should be instructed to put  
22 it on and take it off. We don't need it on for more than a  
23 millisecond, number one.

24 THE COURT: Well, a millisecond is pretty hard to  
25 achieve. But the government will be under instruction with

1 respect to these photos to put them on, elicit the testimony  
2 that is directly relevant, and then pull the photo off the  
3 document camera, and certainly don't leave it up there  
4 lingering while the testimony goes in another direction.

5 MS. HOFFMAN: Of course.

6 MR. O'TOOLE: Testimony --

7 THE COURT: Hold on a second. Government understand  
8 that instruction?

9 MS. HOFFMAN: Yes.

10 THE COURT: Now, Mr. O'Toole.

11 MR. O'TOOLE: What I was going to suggest and ask  
12 the Court to do is elicit the testimony before the picture is  
13 on the screen and then say, I'm going to show you an exhibit  
14 to see if that's what your testimony just was. Put it on the  
15 screen and take it off.

16 THE COURT: I'm not going to choreograph the  
17 government's testimony that tightly. That's artificial. I  
18 will count on the professionalism of the prosecutor. She  
19 understands exactly what the drill is here. If we stray away  
20 from that, I will intervene, but she's got to be given the  
21 opportunity to make her case, present her case.

22 MR. O'TOOLE: The last point I want to make, and I  
23 will stop it, this is, in my estimation, I think the other  
24 picture is less gruesome. I think this with the open eye and  
25 the gross stuff coming out of the head, even if this is a

1 murder case, I think this one's more gruesome than the other,  
2 even though the Court thinks the other way around.

3 THE COURT: Well, let's make sure that Exhibit 2-14  
4 is in the record of this case so the record is complete,  
5 because it is true that the Court is making a comparison  
6 between the two, limiting the government to only one so-called  
7 gruesome photograph and the Court's making its determination  
8 that 2-15 is less gruesome than 2-14. So 2-14 will be  
9 received and made a part of the record in this case, not to be  
10 displayed to the jury. Not to be displayed to the jury,  
11 2-14's received, not to be displayed to the jury. Okay.  
12 You'll need to segregate that exhibit, Ms. Powell, from this  
13 point forward, as will the government, so that eight weeks  
14 from now we don't forget and allow that exhibit back  
15 mistakenly.

16 MS. HOFFMAN: Your Honor, the question is not merely  
17 which photo is more gruesome but which one is more probative.  
18 This one clearly is more probative since it shows both the  
19 casing and it shows a better view of the blood looking like  
20 spaghetti sauce.

21 THE COURT: I understand the government's position.  
22 Regardless, that's my ruling. 2-15 is coming in. And I think  
23 I said this previously, I'll amplify it. That is to say that  
24 given the context, given the testimony that we've heard, the  
25 government is entitled to present a single photograph that

1 records visually the evidence that has been otherwise  
2 described verbally. So 2-15 is coming in over objection.  
3 2-16.

4 MR. O'TOOLE: Objection.

5 MR. BUSSARD: Same objection.

6 THE COURT: Now that it's cumulative and --

7 MR. O'TOOLE: It's the markers, but who cares.

8 MS. HOFFMAN: The markers show where the casings are  
9 in relation to the body.

10 MR. O'TOOLE: Doesn't make him more dead or less  
11 dead. The casings are in the room.

12 THE COURT: The Court, in looking at 2-16, would not  
13 classify it as a gruesome photograph. There clearly is a dead  
14 body depicted, but there is the additional information  
15 indicating where shell casings were found. 2-16's coming in  
16 over objection. 2-18.

17 MR. O'TOOLE: No objection.

18 THE COURT: 2-19.

19 MR. O'TOOLE: No objection.

20 MR. FRANCOMANO: No, Your Honor.

21 MR. BUSSARD: No objection.

22 THE COURT: I should be ruling on which of these --  
23 2-16 is in, 2-18 is in, 2-19 is in. Mr. Bussard.

24 MR. BUSSARD: Only objection I have, I don't believe  
25 this is the one that actually places the little plaque cards

1 there. I think it's the crime scene tech, is the person  
2 actually who did this.

3 THE COURT: Well, we'll see if the witness has  
4 enough knowledge as sort of ordinary practices of the police  
5 department to be able to testify to that foundation. 2-20.

6 MR. O'TOOLE: No objection.

7 MR. FRANCOMANO: No objection.

8 MR. BUSSARD: Same objection.

9 THE COURT: Same objection. So defendant Jones  
10 objects, defendant Johnson does not object, defendant McCants  
11 does not object. 2-20 is coming in, subject to the laying of  
12 an appropriate foundation. That's true with respect to all  
13 these photographs. Last of all, what is that?

14 MS. HOFFMAN: I think it's just meant to mark the  
15 casing, not whatever that is. There's a casing just above  
16 the -- right here.

17 THE COURT: I'm just curious what that object is  
18 that's depicted in Exhibit 2-21 in the lower left of the  
19 photograph.

20 MS. HOFFMAN: I'm not sure. I think it's a piece of  
21 trash.

22 MR. O'TOOLE: Since nobody knows, we object and  
23 based on the objection of Mr. Bussard, we would join the  
24 objection and object to this one as well.

25 THE COURT: I have no idea what that is, but that



1 doesn't strike the Court as anything prejudicial. It doesn't  
2 seem to -- I don't know what it is. It looks like a piece of  
3 plastic. Nothing prejudicial about it. 2-21 is coming in,  
4 also subject to the laying of a proper foundation.

5 MS. HOFFMAN: Thank you.

6 THE COURT: Okay. You may step back.

7 (The following proceedings were had in open court.)

8 THE COURT: Ladies and gentlemen, you have heard  
9 testimony so far in this case that has described the  
10 commission of homicides. In a few moments the government is  
11 going to attempt to introduce photographs in relation to one  
12 of those events that witnesses have spoken of in recent days.  
13 Solely out of a concern for your own feelings and  
14 sensitivities, I wish to warn you that some of the pictures  
15 that you will be -- that you may be shown in a few moments are  
16 graphic. You may proceed.

17 MS. HOFFMAN: Thank you, Your Honor.

18 Q (BY MS. HOFFMAN) Sergeant Lloyd, you testified that when  
19 you responded to the crime scene, the victim was still  
20 present; is that right?

21 A Yes, ma'am.

22 Q And did you observe the position in which the victim's  
23 body laid there?

24 A Yes, ma'am.

25 Q And you testified that photographs were taken of the

1 crime scene; is that right?

2 A That is correct, ma'am.

3 Q Have you reviewed those photographs?

4 A Yes, ma'am, I did.

5 Q Do they accurately depict the crime scene as you observed  
6 it?

7 A Yes, ma'am.

8 Q Going to show you Government's Exhibit No. P, as in Paul,  
9 HCS 2-1. What are we looking at here?

10 A We're looking at an envelope, ma'am, that normally  
11 contains photographs ascribed to this investigation with the  
12 central complaint number.

13 Q Could you read the central complaint?

14 A 07-5A, as in Adam, 03994.

15 Q I'm going to show you Government's Exhibit No. PHCS 2-2.  
16 What are we looking at here?

17 A That's the front of the residence, ma'am, of  
18 221 East 25th Street in Baltimore, the crime scene.

19 Q Going to show you what's been marked as  
20 Government's Exhibit PHCS 2-3. What are we looking at here?

21 A This is the open door of the front entrance, ma'am, of  
22 221 East 25th Street, ma'am.

23 Q Going to show you Government's Exhibit No. PHCS 2-5. Can  
24 you tell us what we're looking at here?

25 A Looking at a picture that depicts the victim laying in

1 the commonplace I described earlier of the first floor of  
2 221 East 25th Street.

3 Q And is this an accurate depiction of how you found the  
4 victim when you arrived on the scene?

5 A Yes, ma'am, it is.

6 Q I'm going to show you Government's Exhibit No. PHCS 2-11.  
7 What are we looking at here?

8 A This is a closer up view of a photograph taken of the  
9 victim as he lay at the crime scene, ma'am.

10 Q And can you describe his position for the record?

11 A He's laying on his back, ma'am, fully clothed. He had  
12 obvious signs of gunshot injuries.

13 Q Going to show you Government's Exhibit No. PHCS 2-15.  
14 What are we looking at here?

15 A This is a close up view, ma'am, of the victim involved in  
16 this matter. It depicts, as you can see in the picture, his  
17 head, brain matter, and ballistic evidence, which is just  
18 adjacent to his head, ma'am, indicative that he was shot at  
19 close range.

20 Q When you say ballistic evidence, what do you mean?

21 A That's a casing, ma'am, known as a casing.

22 Q Going to show you Government's Exhibit PHCS 2-16. What  
23 are we looking at here?

24 A This is another view, ma'am, a photograph of our victim.  
25 Again, fully clothed, around him are indicators that are

1 numbered and citing ballistic evidence or evidence involved in  
2 this case.

3 Q Going to show you Government's Exhibit No. PHCS 2-18.

4 What are we looking at here?

5 A As I just made reference, ma'am, of those markers. Mark  
6 No. 1, and what you're looking at is a casing.

7 Q I'm going to show you Government's Exhibit PHCS 2-19.

8 What are we looking at here?

9 A Another photograph, ma'am, of ballistic evidence, also  
10 known as a casing, marked No. 3.

11 Q Going to show you Government's Exhibit No. PHCS 2-20.

12 What are we looking at here?

13 A It's another photograph, ma'am, depicting ballistic  
14 evidence, but this is a cartridge and it's marked No. 4. That  
15 was recovered from the crime scene, ma'am, just adjacent to  
16 his body.

17 Q And what's the difference between a cartridge and a  
18 casing, if you know?

19 A With a firearm you have two types of firearms, handgun,  
20 should I say. One of which is a semi-automatic weapon and a  
21 semi-automatic weapon, it ejects what we know as cartridges --  
22 I'm sorry, casings. Before it ejects a casing, you have  
23 what's known as a cartridge, ma'am, and at the tip of that  
24 cartridge is what we know as a bullet. A bullet goes in you  
25 and ejects a casing. The whole thing is known as a cartridge.

1 That's what you're looking at now.

2 Q So you recovered this cartridge from the crime scene?

3 A Yes, ma'am.

4 Q And that's an unfired round of ammunition; is that  
5 correct?

6 A That is correct.

7 Q Going to show you Government's Exhibit No. PHCS 2-21.  
8 What are we looking at here?

9 THE COURT: Can we sharpen that focus?

10 MS. HOFFMAN: It's actually not showing up on the  
11 screen right here.

12 A Okay. Other evidence, ma'am, recovered. Marked 5 and 6,  
13 photographs, depicts casings, ma'am.

14 Q (BY MS. HOFFMAN) Were the casings and the projectile  
15 recovered from the scene?

16 A Yes, ma'am.

17 Q And were they submitted to evidence?

18 A Yes, ma'am, they were.

19 Q I'm going to approach and show you  
20 Government's Exhibit 25. Are you familiar with this  
21 exhibit?

22 A Yes, ma'am.

23 Q And what is it?

24 A This is our evidence envelope, ma'am, that contains the  
25 ballistic evidence recovered from the crime scene.

1 Q And can you tell us specifically what caliber casings  
2 were recovered?

3 A 9mm, ma'am.

4 Q And how many?

5 A Five casings and one cartridge.

6 Q And backing up just a --

7 MR. BUSSARD: Your Honor, objection.

8 THE COURT: You may approach.

9 (Bench conference on the record.)

10 THE COURT: Yes, sir.

11 MR. BUSSARD: Your Honor, the word that's being  
12 entered around here is the word "recovered." In fact, there's  
13 a chain of custody. The chain of custody is going through the  
14 crime scene tech, who actually picks it up with the rubber  
15 gloves and puts it in a packet and then puts it inside this  
16 package there. So he's using the word recovered as a team  
17 effort instead of as an individual effort. And unless he can  
18 identify that he's the one that actually picked it up and did  
19 it, we're missing a step in there.

20 MS. HOFFMAN: I can clarify that it was a crime  
21 scene tech who physically picked up the items. I thought I  
22 had worded it "were they recovered."

23 THE COURT: And how does he know that the crime  
24 scene tech picked up these exhibits?

25 MS. HOFFMAN: Right.

1 THE COURT: Sustained. You may continue.

2 (The following proceedings were had in open court.)

3 THE COURT: Sustained. Next question.

4 Q (BY MS. HOFFMAN) Sergeant Lloyd, I asked you about the  
5 recovery of the casings and cartridge from the scene, were you  
6 personally the person who physically picked them up at the  
7 scene?

8 A No, ma'am.

9 Q Who was that?

10 A A crime lab technician, ma'am, under my direction.

11 Q Did you observe these items being recovered?

12 A Yes, ma'am.

13 Q I'm going to show you Government's Exhibit No. P, as in  
14 Paul, HE25. And what are we looking at here?

15 A Again, we're looking at photographs of the ballistic  
16 evidence, ma'am, in reference to this case, which are casings  
17 and a cartridge, ma'am.

18 Q And are those the casings and cartridge that you have in  
19 front of you?

20 A Yes, ma'am.

21 Q Did you ultimately learn the identity of the victim?

22 A Yes, ma'am.

23 Q Who was it?

24 A His name was Gregory Rochester, ma'am, also known as  
25 Craig Mack.

1 Q Did you identify any -- I'm sorry, backing up a step,  
2 were there any other occupants of the building present when  
3 you arrived on the scene?

4 A Yes, ma'am, as I recall.

5 Q Who were they?

6 A Mr. Gerald Johnson, Ms. Tyra Wheatley, and  
7 Mrs. Coco Stackhouse, if my memory proves correct.

8 Q And are any of those individuals sitting in the courtroom  
9 today?

10 A Yes, ma'am.

11 Q Who is that?

12 A Mr. Gerald Johnson, also known as Geezy.

13 Q Can you point him out -- I'm sorry.

14 A Right here, the young man in the red vest and the plaits  
15 in his hair and glasses.

16 Q Thank you. Did you identify any witnesses to the  
17 murder?

18 A No, ma'am.

19 Q Did you attend the autopsy of the victim?

20 A Yes, ma'am, I did.

21 Q And based on your attendance of the autopsy, did you  
22 learn the victim's cause of death?

23 A Yes, ma'am, I did.

24 Q What was it?

25 A A homicide by way of multiple gunshot injuries.



1 MS. HOFFMAN: Your Honor, at this point I'd like to  
2 read part of Stipulation No. 3 into the record, specifically  
3 paragraph 2 of Stipulation No. 3.

4 THE COURT: Without objection. Ladies and  
5 gentlemen, you'll recall that a stipulation is a factual  
6 statement that the parties, all of them, the government and  
7 the defendants, agree is true. So what's about to be read to  
8 you you're to take as proven as true. There's nothing for you  
9 to decide with respect to this. You're to accept it as true.  
10 Go ahead.

11 MS. HOFFMAN: Paragraph 2 of Stipulation No. 3  
12 reads: Government's Exhibit No. AR 2 is an autopsy report  
13 prepared by Dr. Patricia Aronica-Pollak of Maryland's OCME in  
14 connection with the death of Gregory Rochester on  
15 January 9th, 2007. It is agreed and stipulated by the parties  
16 that Dr. Aronica-Pollak determined that Rochester's manner of  
17 death was homicide and cause of death was nine gunshot wounds,  
18 specifically four gunshot wounds to the head, one gunshot  
19 wound to the neck and four gunshot wounds to the upper  
20 extremities. Government's Exhibit No. AR 2 is admitted into  
21 evidence without the necessity of testimony by  
22 Dr. Aronica-Pollak. And I'd like to move  
23 Government's Exhibit AR 2 into the record by stipulation.

24 THE COURT: Without objection.

25 MR. O'TOOLE: No objection.

1 THE COURT: It is received. Is there also a  
2 stipulation of the parties that OCME stands for Office of the  
3 Chief Medical Examiner, is that also your stipulation,  
4 Ms. Hoffman?

5 MS. HOFFMAN: Yes, I believe that's correct.

6 THE COURT: Mr. O'Toole.

7 MR. O'TOOLE: Yes, sir.

8 THE COURT: Mr. Bussard.

9 MR. BUSSARD: No objection.

10 THE COURT: Mr. Francomano.

11 MR. FRANCOMANO: Correct, Your Honor.

12 THE COURT: OCME means the Office of the Chief  
13 Medical Examiner, you can accept that as true as well. The  
14 report is received in evidence. You may continue.

15 Q (BY MS. HOFFMAN) Was there any ballistic evidence  
16 recovered at the time of the autopsy?

17 A Yes, ma'am.

18 Q I'm going to show you Government's Exhibit No. PHE 26.  
19 And also, let me approach and show you  
20 Government's Exhibit 26.

21 MR. BUSSARD: Your Honor, objection again, same  
22 objection.

23 THE COURT: Let's approach.

24 (Bench conference on the record.)

25 THE COURT: So Mr. Bussard, do we have a genuine

1 dispute then as to the chain of custody of the ballistic  
2 evidence in this case?

3 MR. BUSSARD: Yes.

4 THE COURT: All right. Well, what's the  
5 government's point of view given that you don't seem to have  
6 an agreement?

7 MS. HOFFMAN: Well, I mean, he attended the  
8 autopsy --

9 THE COURT: Has he kept these items in his personal  
10 possession at all times except when they were logged into the  
11 evidence room at the Baltimore City Police Department?

12 MS. HOFFMAN: I think the chain of custody has  
13 probably included other individuals, although I'm not certain.  
14 I didn't realize that that was in dispute, and so I hadn't  
15 questioned the witness about it.

16 THE COURT: All right. Well, you don't seem to have  
17 an agreement with at least one of the three lawyers. So we'll  
18 go as far as we can, but the chain of custody is an  
19 evidentiary prerequisite. It's a prerequisite to admission of  
20 the exhibits. Well, actually the exhibits have already been  
21 received. I suppose what it is, is a prerequisite to the  
22 testimony about the exhibits in terms of what they might tell  
23 us because the issue with respect to a suspect's chain of  
24 custody is that perhaps the evidence was altered somehow.

25 So that then raises the question of whether that's a

1 reasonable -- is chain of custody necessary in order to put in  
2 this sort of evidence that you want to admit here? If it's a  
3 chemical question, like a blood sample, that sort of thing,  
4 there's really no way around it. The chain of custody has to  
5 be absolutely proven from A to Z. Physical objects sometimes  
6 can have evidentiary value even without the chain of custody  
7 being clear if the aspect of the object that is of evidentiary  
8 value has probativity by its nature would survive and be, you  
9 know, probative, regardless of whether it was continuously in  
10 the custody of a particular witness. All that has to be  
11 determined on a step-by-step basis if we really have a dispute  
12 here.

13 MS. HOFFMAN: Don't we have to -- in order to prove  
14 that chain of custody, don't we have to first identify -- have  
15 the recovering --

16 THE COURT: You absolutely do, and you have, I  
17 think, proven the first step, which was that the -- these  
18 particular shell casings and this cartridge were recovered  
19 from that scene. And without challenge this witness testified  
20 that the casings that are in front of him right now are  
21 exactly the same ones. So there's no real issue about that.  
22 If there was one, it was waived by virtue of their not having  
23 objected during the entry. But what's left is the aspect of  
24 chain of custody while it has to do with potential alteration  
25 of evidence during its passage from the crime scene to the

1 courtroom. And that's where there still may be some  
2 ambiguity. What's not resolved in my mind is the question  
3 that I raised, probably somewhat inarticulately, which is  
4 that, does chain of custody ambiguity pose a question about  
5 the validity of all types of physical evidence or only certain  
6 types of physical evidence?

7 MS. HOFFMAN: I'm not sure and I'm not sure what the  
8 nature of the dispute is and it's hard to say without knowing  
9 whether the argument is that they were altered in some way or  
10 that different ones were substituted completely or what the  
11 argument is.

12 THE COURT: Well, if you were able to bring  
13 witnesses to the courtroom who were able to say, I know the  
14 evidence was recovered from thus and such location and placed  
15 in a sealed uncontaminated environment and was taped shut, and  
16 there was a signature across it that shows it was not  
17 disturbed and that witness or someone else then says, then I  
18 took it from that person and lodged it in the evidence vault  
19 and here are the records that were maintained in the evidence  
20 vault to show when the evidence came in, when the evidence  
21 went out.

22 And it's ordinary practice to operate the evidence  
23 vault in that way such that we can have confidence that the  
24 evidence never left the evidence vault until it was taken to  
25 the forensic examiner, who signed for the item, who can so

1 testify and it went back and was lodged back -- I mean, that's  
2 how it's done. It's almost never required, but if they're not  
3 going to agree to it, I don't know that you have any option if  
4 you want to be certain of its admission other than to take it  
5 through that drill. So -- I -- to the extent -- I take it  
6 this was not raised pretrial.

7 MS. HOFFMAN: No.

8 THE COURT: I will give the government a lot of  
9 latitude, if you need a postponement, if you need to stop the  
10 trial for a few days in order to round up those witnesses.  
11 You know, I don't -- it's a bit of an ambush. That said, I  
12 don't mean to suggest that a defendant doesn't have the  
13 absolute right to insist that the rules of evidence be  
14 complied with. I'm not going to allow the government to  
15 shortcut it. But in terms of just how we actually conduct the  
16 trial, I don't really fault the government here. So do you  
17 want to talk among yourselves for a few minutes see how you  
18 want to do it?

19 MR. MARTINEZ: What we would request is a minimum --  
20 a brief break so that we can confer amongst ourselves. And  
21 then we may either ask for a continuance to go get records,  
22 such as evidence control property sheets that perhaps this  
23 detective could testify to that. But if we determine that the  
24 rabbit hole is deeper and we need to unearth additional law  
25 enforcement witnesses to deal with the ambush, then we might

1 need more time.

2 THE COURT: Yes, I think that it's probably the  
3 latter because I can't imagine that one homicide detective is  
4 responsible for an entire chain of custody on ballistics  
5 evidence. It's going to be crime scene technicians, it's  
6 going to be the detective overseeing it. It's going to be the  
7 crime tech who gathers the evidence, if it's like other cases,  
8 and is responsible for taking it to the evidence custodian.

9 It gets signed in there, so somebody has to have  
10 signed it. To find that person or if you -- if they're  
11 unavailable, then you have to do it through documentary  
12 records, then you have to bring in someone who is the  
13 custodian of the evidence vault to explain what the ordinary  
14 practices are, what the various signatures mean, how envelopes  
15 are signed, and so forth, and to explain that whole process.  
16 Then also, the evidence left the vault and went to an  
17 examiner. You have to take it out of the vault, then you're  
18 going to have to examine it.

19 MS. HOFFMAN: Might have to call agent -- our case  
20 agent.

21 THE COURT: Then it's going to go back in the vault,  
22 then it's got to come into the courthouse.

23 MR. MARTINEZ: We understand. And I think all of  
24 this plays up the importance of notice. And you know,  
25 Mr. Bussard was probably the most prolific filer of pretrial

1 motions, both motions to suppress and motions in limine. This  
2 did not come up. We certainly recognize that a defendant has  
3 the right to insist that a chain of custody be proven up.

4 THE COURT: Right.

5 MR. MARTINEZ: But the -- had we known this was  
6 going to be disputed, our order of proof would have looked  
7 different. And I do think -- I appreciate the Court's offer  
8 of additional time to allow the government to deal with this  
9 issue.

10 THE COURT: I think it's also on the government  
11 though. I think the government, you have evidence like this,  
12 it's to you to go to defense counsel and, you know, we don't  
13 have a chain of custody dispute here; right, and to try get  
14 something like that locked in. If that had happened, I'm sure  
15 I would have heard about it, so I don't think that occurred  
16 here either.

17 MR. MARTINEZ: We did this --

18 THE COURT: A defendant is always entitled to lay in  
19 the weeds and not say a word. And you know, when they're --  
20 if there's really something to this, you know, that is not  
21 only their right, it's their responsibility. If it turns out  
22 that there actually isn't a chain of custody problem here,  
23 it's just going through the steps. Well, it's Mr. Bussard's  
24 prerogative. And you know, the law is the law. Government's  
25 responsible for proving chain of custody.



1 MR. BUSSARD: Your Honor, if I may.

2 THE COURT: Yes.

3 MR. BUSSARD: It wasn't a complete ambush because I  
4 filed a motion last week and the chain of custody issue was  
5 discussed and when the lost firearms issue came up. And I did  
6 talk about that slightly. I think the Court even talked about  
7 chain of custody. I also filed pretrial motions. What I want  
8 to point out, Your Honor, is the crux of Mr. Jones's -- the  
9 prosecution's case against Mr. Jones is going to be this  
10 afternoon when the firearms expert starts linking up or  
11 attempting to link up items from this and another -- at least  
12 one more incident and maybe two incidents down the road. And  
13 since there's no eyewitnesses or anything else, this is my  
14 defense, I have to fight it at the point of when the evidence  
15 starts coming in.

16 THE COURT: It's messy work. We are where we are.  
17 I think the important point for the government is that I am  
18 flexible and will give you the latitude. We could stop for  
19 the day. This is Thursday. It's the end of the trial week,  
20 that would give you over the weekend to sort of pull the proof  
21 together in a way that you evidently didn't anticipate was  
22 necessary. Perhaps there's other things that can be  
23 accomplished during the day that won't require the chain of  
24 custody. I put it in your hands. Why don't we take the  
25 morning break, at the end of the morning break, before I bring

1 the jury back in, I'll find out where counsel stand with  
2 respect to the entire matter and we'll decide where we're  
3 going to go from there.

4 MR. MARTINEZ: Thank you.

5 (The following proceedings were had in open court.)

6 THE COURT: Ladies and gentlemen, we'll take our  
7 morning break. During the break do not discuss the case with  
8 anyone. Do not discuss the case even among yourselves. Do  
9 not allow yourselves to be exposed to any news articles or  
10 reports that touch upon the case or the issues that it  
11 presents or any articles or reports that relate to any of the  
12 participants in the case. Avoid all contact with any of the  
13 participants in the trial. Do not make any independent  
14 investigation of the law or the facts in the case. Do not  
15 look up anything on the internet. Do not consult an  
16 encyclopedia or a dictionary. 15 minutes. Please take the  
17 jury out.

18 (Jury left the courtroom.)

19 THE COURT: Detective Lloyd, you may step down.  
20 You're required to return in 15 minutes. Court is in recess  
21 for 15 minutes.

22 (A recess was taken.)

23 THE COURT: The jury is not present. We're going to  
24 take up the issue that we were discussing at the bench a few  
25 moments ago. Sometimes consulting the rule book is the best

1 strategy. In fact, oftentimes in law. I think we have a  
2 tempest in a teapot here. Rule 901 B4 would seem to be the  
3 most applicable provision of the many rules of evidence that  
4 are implicated by the problem that we confront and that  
5 Mr. Bussard has raised. There are many ways to authenticate  
6 and identify an item of evidence, such that a sufficient  
7 foundation is laid for its admission.

8 With respect to physical objects and evidence of  
9 that sort, certainly proving up a chain of custody is one way  
10 and can be an element of how the process should work in order  
11 to demonstrate the proper foundation. But depending upon the  
12 particular type of evidence and its character, proving up a  
13 chain of custody might not be the only way to establish the  
14 necessary foundation. Rule 901 B4 reads -- well, first of  
15 all, let me read 901 A: To satisfy the requirement of  
16 authenticating or identifying an item of evidence produce  
17 evidence sufficient to support a finding that the item is what  
18 the proponent claims it is. Then we go to subsection B, with  
19 many examples: Four, distinctive characteristics and the  
20 like, the appearance, contents, substance, internal patterns,  
21 or other distinctive characteristics of the item taken  
22 together with all the circumstances.

23 That can be a basis by which authentication and  
24 identification occurs. Let's imagine the following scenario:  
25 There's a murder. A police officer comes to the scene of the

1 murder and collects evidence, including shell casings, puts  
2 them in his or her pocket, takes them home, and forgets about  
3 them. Retires, leaves them in his uniform trousers for five  
4 or six years, moves a few times. And then years later, with  
5 there being absolutely no way of proving a chain of custody  
6 because, who knows where those shell casings have been since  
7 they left the crime scene, they're rediscovered and brought  
8 back to light.

9 And no one claims any ability whatsoever to be able  
10 to prove exactly where those shell casings have been in the  
11 intervening five or ten years. Are they now of no probative  
12 value? Do they lack any indicia of admissibility because the  
13 chain of evidence can't be proven? Well, let's suppose that  
14 that evidence was a little small, little baggie of marijuana  
15 that was lurking in some officer -- or some retired officer's  
16 trouser pocket. Well, there would be a problem because how  
17 can you tell one little baggy of marijuana from another baggy  
18 of marijuana? How do you know it's the same one? You don't  
19 know.

20 So unable to prove the chain of custody, there's a  
21 problem in terms of foundation for that document. But these  
22 are shell casings, and the question is, do they have an  
23 appearance or contents or substance, internal patterns, or  
24 other distinctive characteristics that nonetheless  
25 authenticate them and identify them despite where they might

1 have been? I would have to imagine that that's very possibly  
2 true here. It hasn't been demonstrated yet, but it might  
3 easily be demonstrated without any reference to a chain of  
4 custody.

5 Certainly, the government would have to be able to  
6 connect the shell casings, but the shell casings in this case  
7 where we are at this moment in time, they're already in  
8 evidence. They were admitted. There was no objection,  
9 they've been admitted, and this detective has testified that  
10 these are the shell casings. How did he know that? Perhaps  
11 by looking at an -- the envelope that contained them. Had  
12 there been a dispute, we might have gotten into another  
13 battle, which probably would have been resolved under Rule 901  
14 B9, evidence about a process or system, evidence describing a  
15 process or system in showing that it produces an accurate  
16 result.

17 You know, maybe we would have gone into that before  
18 the casings were admitted, if it had been disputed, but it  
19 wasn't. So the casings are in. The question is, do the  
20 casings have evidentiary value? I take it that the government  
21 intends to call an expert witness who's going to identify the  
22 same casings that Detective Lloyd says were collected from the  
23 murder scene and say that he or she examined these casings and  
24 then somehow through analysis connects them, I take it, to a  
25 particular firearm. And you know, where the story goes from

1 there, I, you know, I don't know, but I assume that that's  
2 where the government is headed.

3 And if the testimony of a qualified expert is, I can  
4 say within a reasonable degree of certainty that these shell  
5 casings came from that gun, then the foundation is laid,  
6 without any reference to a chain of custody.

7 Mr. Bussard, what's wrong with that analysis?

8 MR. BUSSARD: Your Honor, the Court indicated that  
9 the wording of 901, and I don't have it in front of me, is any  
10 "distinctive characteristics." A shell casing doesn't have  
11 distinctive characteristics.

12 THE COURT: Well, a generic shell casing doesn't,  
13 but we're making assumptions here. I don't know if this is  
14 what the proof is going to be, but given fact that we're  
15 having this argument, it's reasonable, I think, to make a few  
16 assumptions here. The jury is not in the courtroom. The  
17 assumption that I'm making is that there's going to be an  
18 expert who's going to come in and say, I found distinctive  
19 markings on this shell casing. It is no longer a generic  
20 shell casing. It's a shell casing that has a particular  
21 pattern of marks on it. It's distinctive. That's what I'm  
22 anticipating. So I'm asking you to assume that circumstance  
23 for purposes of this debate. Sure, the government still has  
24 to prove that, but if they do, then where are we?

25 MR. BUSSARD: No objection as to that analysis, but

1 there will be in the future to every -- putting everybody on  
2 notice, there's going to be an objection to every other shell  
3 casing that comes in from the beginning.

4 THE COURT: That's fine, if the objection though, is  
5 solely that it's inadmissible because the government can't  
6 prove an absolute chain of custody in the manner that we were  
7 describing at the bench conference, which is the sort of thing  
8 that the Court would expect and would typically require if  
9 we're dealing with something generic, say like a little bag of  
10 marijuana. You have to show that that's the same bag of  
11 marijuana and because it's so common and so hard to  
12 distinguish and there's nothing distinctive about it, the fall  
13 back is that you prove the chain of custody. That's how you  
14 prove it's the same one. But the point is, that under 901 B4  
15 there's an alternative means by which you can prove that it is  
16 the same thing. You know, I don't know if the government can  
17 do it, but I imagine that they believe that they can. This  
18 whole part of the case is predicated on that, presumably.  
19 So.

20 MR. BUSSARD: Your Honor, I'll turn the argument  
21 around. The shell casing is almost a fungible item except for  
22 that one identifiable distinguishing item that is on the  
23 firing pin. That's what's going to be the crux of this whole  
24 thing when Sandra Bohlen gets on the stand. So it is  
25 distinctive and this witness cannot testify that that -- that

1 that in fact is the same casing that was picked up as he's  
2 looking at it today. He didn't -- he didn't pick it up. He  
3 didn't put it in the envelope. Somebody else did all that and  
4 then it's been out of his control since that time.

5 THE COURT: That's not true. He did testify that he  
6 saw these casings get picked up by a crime lab technician and  
7 he said -- he murmured it, I heard him say it, he said, "under  
8 my supervision." So he did testify to that, that those very  
9 casings, those ones that were right in front of him, depicted  
10 in the little glassine envelopes and the manila bag in front  
11 of him, were the casings that were picked up from that  
12 scene.

13 MR. BUSSARD: And he said that by not even opening  
14 the package. He looked at the photograph, he looked at the  
15 outside of the package, and said that was the same casings.  
16 He did not examine those. He didn't put a laser mark on it or  
17 some -- whatever they use, black marker to mark these as a  
18 unique marking that he saw that happen.

19 THE COURT: Well, my assumption from watching him  
20 testify was that he was examining the packaging when he  
21 offered that testimony. And certainly that's fertile ground  
22 for cross-examination. And the problem you face is that the  
23 shells themselves are already in evidence and came in without  
24 objection. It's the -- all you've got left is an objection to  
25 whether or not there can be a connection made between them and



1 this firearm that I assume is coming.

2 Perhaps the government intends to further develop  
3 the testimony with the detective about how he knows those are  
4 the same shells from the packaging, I don't know. But I don't  
5 think we're at a point where the identifying of the marks or  
6 the authentication, actually, of the marks on the shell  
7 casings are yet an issue. We're just at a point where we have  
8 proof that these particular shell casings that are in the  
9 courtroom are the ones that were picked up at the crime scene.  
10 And the detective has said that they were. I think you're  
11 entitled to attack that if you want to on cross-examination  
12 about, you know, how could he possibly know. I mean, he  
13 didn't look at them under a microscope or whatever. We'll see  
14 what his answer is to that. Mr. O'Toole.

15 MR. O'TOOLE: Your Honor, two things: First, going  
16 back to the -- we're going to join this objection of course  
17 and I want to make sure the Court either expects or doesn't  
18 expect us with these objections to specifically and out loud  
19 join it, but we are joining this objection. But the second  
20 point is that I thought the issue we discussed at the bench  
21 was the potential for these pieces of evidence to have been  
22 altered from the time they were on the floor and picked up by  
23 somebody and put into the envelopes and sometime later when  
24 the expert viewed them. And there's no evidence now, without  
25 the chain of custody testimony that we, I think, are entitled

1 to, to know that these individual casings were not altered.

2 THE COURT: Yes. Okay. And that will come down to  
3 the forensic scientist and that's fair game. I think it's  
4 very unlikely that you'll persuade the Court that there is any  
5 significant chance whatsoever that there could have been  
6 randomly placed on the shell casing some mark that coincides  
7 with the mark that shows up on a test casing fired from the  
8 same weapon. But we'll see what the expert has to say about  
9 that.

10 MR. O'TOOLE: All right. But the first point is, is  
11 the Court approving that we should or should not be  
12 specifically joining every objection?

13 THE COURT: I think that it goes -- I think that you  
14 should join objections, yes.

15 MR. O'TOOLE: Then we do.

16 THE COURT: Yes, Mr. Francomano, you have as well.

17 MR. FRANCOMANO: We do as well, Your Honor.

18 THE COURT: All right. In light of that, I think  
19 we're ready to pick up with where we left off, unless the  
20 government wants to go down some other road.

21 MS. HOFFMAN: If I could just have maybe one minute  
22 with co-counsel.

23 THE COURT: Yes.

24 (Counsel conferring.)

25 MR. MARTINEZ: We're ready to go.

1 THE COURT: We're ready. Let's bring them in. And  
2 let's get the detective back on the stand.

3 (Jury entered the courtroom.)

4 THE COURT: Be seated, please. Sergeant Lloyd, you  
5 remain under oath. Your witness, ma'am.

6 Q (BY MS. HOFFMAN) When we left off, Sergeant Lloyd, you  
7 testified that you attended the autopsy of the victim,  
8 Gregory Rochester; is that right?

9 A Yes, ma'am.

10 Q I believe you also testified that you observed as  
11 ballistic evidence was recovered at the time of the autopsy;  
12 is that right?

13 A That's right.

14 Q What ballistic evidence was recovered?

15 A It was eight pieces of projectiles recovered from the  
16 body of the -- the remains, I should say, of  
17 Gregory Rochester, ma'am.

18 Q And were those -- who submitted those projectiles into  
19 evidence?

20 A I did, ma'am.

21 Q You personally submitted them --

22 MR. BUSSARD: Objection.

23 THE COURT: Sustained.

24 Q (BY MS. HOFFMAN) Were are the projectiles submitted into  
25 evidence?

1 A Yes, they --

2 MR. BUSSARD: Objection.

3 THE COURT: You may approach.

4 (Bench conference on the record.)

5 THE COURT: I don't know what the objection is, but  
6 my problem is what you're saying is "into evidence" is  
7 confusing in front of the jury. I understand what you mean by  
8 it, he understands what you mean by it, but they have no idea  
9 what you mean by it. They think you mean here in court.  
10 That's what evidence is to them. You need to come up with  
11 some other terminology, I don't know if it's the evidence room  
12 or the --

13 MS. HOFFMAN: Yeah.

14 THE COURT: -- or the evidence custodian at the  
15 police department --

16 MS. HOFFMAN: Got it.

17 THE COURT: -- or whatever else. Now, was there  
18 some other objection besides that?

19 MR. BUSSARD: No, that was it.

20 THE COURT: Thank you.

21 (The following proceedings were had in open court.)

22 THE COURT: Sustained. You may continue.

23 Q (BY MR. MARTINEZ) Sergeant Lloyd, were those projectiles  
24 submitted to the Evidence Control Unit at  
25 Baltimore City Police Department Headquarters?

1 A Yes, ma'am, they were.

2 Q And who submitted those projectiles to the Evidence  
3 Control Unit?

4 A That was me, ma'am.

5 Q As part of your investigation, Sergeant Lloyd, did you  
6 canvass the area of 221 East 25th Street for potential  
7 witnesses?

8 A Yes, ma'am, I did.

9 Q Did you identify any witnesses?

10 A No, ma'am.

11 Q Were there any closed circuit television cameras or  
12 surveillance cameras in the area of the murder?

13 A No, ma'am.

14 Q In the first five months after the murder, did you  
15 identify any suspects?

16 A Not during that time, no, ma'am.

17 Q I want to direct your attention to June 11th of 2007.  
18 Did there come a time when a witness came forward with  
19 information about the murder of Gregory Rochester?

20 A Yes, ma'am.

21 Q And who was that?

22 A Mr. Christopher Meadows.

23 Q I'm going to show you Government's Exhibit No. P, as in  
24 Paul, HI58. Who are we looking at here?

25 A That is Mr. Christopher Meadows, ma'am.

1 Q Was Mr. Meadows in custody when he came to speak with  
2 you?

3 A Yes, ma'am, he was.

4 Q Do you know what offense he had been charged with?

5 A I think it was unrelated firearm offense, ma'am.

6 Q Was that a state or federal charge?

7 A I believe it was state, ma'am, if I'm not mistaken.

8 THE COURT: I need you to keep your voice up, sir.

9 THE WITNESS: I believe it was state, sir, I'm  
10 sorry.

11 Q (BY MS. HOFFMAN) To your knowledge, did Mr. Meadows have  
12 a cooperation agreement with the government at the time he  
13 spoke to you?

14 A No, ma'am.

15 Q Did you interview Mr. Meadows?

16 A Yes, ma'am, I did.

17 Q And was that interview recorded?

18 A Yes, ma'am, it was.

19 Q During the recorded interview, did Mr. Meadows provide  
20 information about who killed Gregory Rochester?

21 A Yes, ma'am, he did.

22 Q Did Mr. Meadows complete a photo array in connection with  
23 what he told you?

24 A Yes, ma'am.

25 Q I'm going to show you Government's Exhibit P, as in Paul,

1 HA4, which has already been admitted into evidence. What are  
2 we looking at here?

3 A This is the photographic array, ma'am.

4 Q And is it the photographic array that Christopher Meadows  
5 completed?

6 A Yes, ma'am, it is.

7 Q Did he pick anyone out of the photo array?

8 A Yes, ma'am, he did.

9 Q What procedures did you use in showing him this photo  
10 array?

11 A A legal caption, ma'am, depicted on the upper portion of  
12 this array, that's read to him, ma'am. And he's asked if he  
13 understands it. To acknowledge that, he places his initials,  
14 which you see at the top right portion, CM,  
15 Christopher Meadows. During this time, ma'am, it's placed  
16 along with photographs consistent with similarities such as  
17 race, hairstyles, and so forth, and he's asked whether or not  
18 he confirmed the person that he identified more or less as the  
19 person who committed this offense.

20 Q And did Mr. Meadows select someone from this photo  
21 array?

22 A Yes, ma'am.

23 Q Who did he select?

24 A Kenneth Jones, also known as Slay.

25 Q And is that the person in the bottom middle depicted

1 here?

2 A Yes, ma'am.

3 Q And is that Christopher Meadows's signature above that  
4 picture?

5 A Yes, ma'am, it is.

6 Q Did Mr. Meadows also write comments in the comments  
7 section of this photo array?

8 A That's on the reverse side, yes, ma'am.

9 Q Could I have you read this for us, Sergeant Lloyd?

10 A Yes, ma'am. "Kenny told me that him and Foo killed  
11 Craig Mack in Geezy's house and that they, both Kenny and Foo,  
12 shot and killed Craig Mack because there was a rumor going  
13 around Craig Mack was telling and the boys from Lanvale and  
14 Barclay wanted him dead. And they told Foo and Kenny to get  
15 him from around y'all. So Kenny and Foo killed him in Geezy's  
16 house and they left him there and Kenny and Foo left out.  
17 Kenny told me he was the one that shot Craig Mack and killed  
18 him. Kenny told me that the first shot was the one that  
19 killed Craig Mack." And he provided his signature there.

20 Q Is that Mr. Christopher Meadows's handwriting in the  
21 comments section?

22 A Yes, ma'am, it is.

23 Q Were you able to identify who Foo was?

24 A Yes, ma'am.

25 Q I'm going to show you Government's Exhibit No. P, as in



1 Paul, HA3, which has already come into evidence as well. And  
2 what are we looking at here?

3 A This is another photographic array, ma'am, consistent  
4 with the one that was presented before.

5 Q And did Mr. Meadows select anyone from this array?

6 A Yes, ma'am, he did.

7 Q Who did he select?

8 A His name was Charles Pace, also known as Foo. The top  
9 right photograph, ma'am. Above that is his signature as well  
10 as date and time.

11 Q And did you use the same procedure in showing this photo  
12 array to Mr. Meadows?

13 A Yes, ma'am.

14 Q Did you make any suggestion to Mr. Meadows about what to  
15 say or who to pick out of these photo arrays?

16 A No, ma'am.

17 MR. BUSSARD: Objection.

18 THE COURT: Basis.

19 MR. BUSSARD: Leading.

20 THE COURT: Overruled. You may answer.

21 A Never, ma'am. Thank you, sir.

22 Q (BY MS. HOFFMAN) In fact, did you have any suspect at  
23 that point in time?

24 A No, ma'am.

25 Q Did you make any promises or threats to induce

1 Mr. Meadows to pick anyone out of the photo array?

2 A No, ma'am.

3 Q Did he complete the photo arrays freely and  
4 voluntarily?

5 A Yes, he did, ma'am.

6 Q Does the Baltimore Police Department have a firearms  
7 examination unit?

8 A Yes, we do.

9 Q And what do they do?

10 A They examine ballistic evidence, ma'am, as recovered from  
11 crime scenes that we investigate to determine whether or not  
12 they're fired from a certain weapon or if there's any  
13 characteristics or connectivity with other cases.

14 Q Did you ask the firearms examination unit to compare the  
15 shell casings that you recovered from the murder scene to  
16 evidence recovered from another crime scene?

17 MR. BUSSARD: Objection.

18 THE COURT: Basis? You can approach.

19 (Bench conference on the record.)

20 THE COURT: He can't offer any opinions, that's for  
21 sure. But did he ask for a comparison from one scene to  
22 another, what's wrong with that?

23 MR. BUSSARD: Well, it's kind of an open-ended  
24 question because we don't have evidence of another crime scene  
25 at this point, so the jury is left wondering how many --

1 THE COURT: Well, maybe that's where she's headed,  
2 but it's still a -- I don't think there's anything wrong with  
3 that question. My assumption was that you were concerned that  
4 he was going to get into the actual comparing, which would  
5 seem to be beyond the scope of his abilities, at least as  
6 to -- as far as he's testified so far. Overruled.

7 (The following proceedings were had in open court.)

8 THE COURT: Overruled. You may answer.

9 A Yes.

10 Q (BY MS. HOFFMAN) And I'll just repeat the question for  
11 the record: Was -- did you ask the firearms examination unit  
12 to compare the shell casings recovered from the Rochester  
13 murder scene to evidence from another crime scene?

14 A Yes, ma'am.

15 Q And which crime scene was that?

16 A It was a nonfatal shooting that concerned another  
17 individual.

18 THE COURT: Can't hear you.

19 MR. BUSSARD: Objection.

20 THE COURT: First -- to the question or to the  
21 answer?

22 MR. BUSSARD: Both.

23 THE COURT: You may approach.

24 (Bench conference on the record.)

25 THE COURT: Ms. Hoffman, give me a proffer of

1 where -- what answer do you expect from the question and  
2 where's your question going to go from there?

3 MS. HOFFMAN: He's simply going to testify about the  
4 request that he made. He can't testify about what evidence  
5 was recovered.

6 THE COURT: Okay. But what crime scene? You asked  
7 him for a particular crime scene. I take it he's about to  
8 identify some other shooting.

9 MS. HOFFMAN: The nonfatal shooting of  
10 Antonio Oliver, a/k/a Bubba.

11 THE COURT: What's wrong with that?

12 MR. BUSSARD: We don't have any evidence of that.  
13 He's already saying it's a nonfatal shooting. We don't know  
14 it's a shooting.

15 MS. HOFFMAN: We actually do through John Hayden.

16 MR. MARTINEZ: Chris Meadows testified yesterday  
17 that Slay said he shot Bubba in the hand.

18 THE COURT: Bubba, he did. He said he shot him in  
19 the hand.

20 THE COURT: Overruled.

21 (The following proceedings were had in open court.)

22 THE COURT: Overruled. Restate the question.

23 Q (BY MS. HOFFMAN) Which crime scene was that?

24 A Antonio Oliver.

25 Q And does Antonio Oliver have a nickname, to your

1 knowledge?

2 A At this time I can't recall, ma'am.

3 Q That's okay. Why did you ask for that comparison to be  
4 made?

5 A To see if the same firearm that was used in the killing  
6 of Gregory Rochester matched that scene, and to my knowledge,  
7 that Mr. Jones had been charged.

8 Q Mr. Jones had been charged with that --

9 A With that offense.

10 Q -- nonfatal shooting of Antonio Oliver?

11 A Yes, ma'am.

12 Q And is that the same Mr. Jones who Christopher Meadows  
13 identified as Kenny in the photo array we just looked at?

14 A The exact one.

15 Q Did you interview Mr. Meadows again after that first  
16 interview?

17 A Yes, ma'am, I did.

18 Q I'm going to show you Government's Exhibit P, as in  
19 Paul -- well, first of all, let me ask you, did Mr. Meadows  
20 complete another photo array during that second interview?

21 A Yes, ma'am, I believe he did.

22 Q And I'm going to show you Government's Exhibit P, as in  
23 Paul, HA5, which has also been admitted into evidence. What  
24 are we looking at here?

25 A This is another photographic array, ma'am, containing the

1 photograph of another person adjoined to the investigation.

2 Q And can you -- is that Mr. Meadows's signature on the  
3 photo array?

4 A Yes, ma'am, along with the date and time.

5 Q And who did he select?

6 A I recall his name is Donatello Fenner, if I'm not  
7 mistaken.

8 Q Can you read -- it might be a little hard to see, but can  
9 you read the date above that photograph that he selected?

10 A Looks like March 23rd, 2008, if I'm not mistaken. Yes,  
11 ma'am.

12 Q Is it -- well, here, let me flip the page over.

13 A Yes, ma'am, March 23rd, 2008.

14 Q Did you say March?

15 A I'm sorry, forgive me, ma'am. I'm tired as I don't know  
16 what. January 23rd, 2008, thank you.

17 Q Thank you. Did Mr. Meadows also write comments here in  
18 the comments section?

19 A Yes, ma'am, he did.

20 Q Is that his handwriting there?

21 A Yes, ma'am.

22 Q Can you read what he wrote?

23 MR. O'TOOLE: Objection, Your Honor, can we  
24 approach, and take it off the screen?

25 THE COURT: Pull it off.

1 (Bench conference on the record.)

2 THE COURT: The exhibit -- the number of the exhibit  
3 that was just on the screen is?

4 MS. HOFFMAN: PHA 5.

5 THE COURT: PHA 5.

6 MS. HOFFMAN: Yeah, it's already in evidence.

7 THE COURT: Do you agree, Ms. Powell, that PHA 5 is  
8 in evidence? The courtroom deputy's record indicates that it  
9 is in evidence. Mr. O'Toole.

10 MR. O'TOOLE: Your Honor, in this situation what the  
11 witness is going to testify to, I think, is that Mr. Meadows  
12 told him that there was an order to kill the victim by Geezy  
13 because there had been somebody at L and B, a different  
14 neighborhood, a different gang, a different part of the city,  
15 had suspected the victim of telling on somebody. But my  
16 position is that that would be hearsay and not covered by  
17 conspiracy.

18 THE COURT: It would be hearsay, but his reading the  
19 statement that is on the exhibit that's already in evidence  
20 would not be hearsay.

21 MR. O'TOOLE: All right. Any conversation he has  
22 about Geezy or anything he heard from Meadows is hearsay.

23 THE COURT: Sure. We haven't -- hasn't been any  
24 suggestion that the government intends to offer such evidence,  
25 if they do, I'll hear your objection.

1 MR. O'TOOLE: Thank you.

2 (The following proceedings were had in open court.)

3 THE COURT: Overruled, you may continue.

4 Q (BY MR. MARTINEZ) Sergeant Lloyd, could you read the  
5 statement that Mr. Meadows wrote here?

6 A Yes, ma'am. "The person in the picture is Don and he was  
7 with Kenny and Foo at Geezy's house when Craig Mack was  
8 killed. And Kenny had told me that all of them were there  
9 together. Kenny and Don is first cousins and they was given  
10 the order to kill Craig Mack by Geezy. It was over something  
11 about Craig Mack had to be telling on somebody from Lanvale  
12 and Barclay." He placed his signature there, ma'am, along  
13 with that date again, which is January 23rd, 2008.

14 Q Did you make any suggestion to Mr. Meadows as to whom he  
15 should pick out of this photo array?

16 A No, ma'am.

17 Q Did you make any promises or threats to induce him to  
18 pick someone out?

19 A No, ma'am.

20 Q Did he complete the photo array freely and voluntarily?

21 A Yes he did.

22 Q Now, you testified earlier that the first time you met  
23 with Mr. Meadows he completed a photo array in which he said  
24 that Kenny and Foo killed Gregory Rochester in Geezy's house;  
25 is that right?



1 A Yes, ma'am.

2 Q And you just testified that the second time you met with  
3 him he completed this photo array in which he said that Geezy  
4 had ordered the murder and Don was also involved; is that  
5 right?

6 A Yes, ma'am.

7 Q Do you know why he provided more information the second  
8 time you met with him?

9 A It's not uncommon to meet with a person initially --

10 MR. O'TOOLE: Objection, Your Honor. State of mind  
11 of somebody else, Your Honor.

12 THE COURT: Sustained. Next question.

13 Q (BY MS. HOFFMAN) Is it common or uncommon, in your  
14 experience, to learn more information from someone the second  
15 time you interview them?

16 A Extremely common, ma'am.

17 Q Why is that?

18 A Their recollection during their initial encounter with  
19 police, the emotional state, and the briefness and complexity  
20 more or less of the questions that are given by the  
21 investigator to the person they're speaking to.

22 Q When you first talked to Mr. Meadows on June 11th of  
23 2007, did he tell you everything that he knew about the murder  
24 of Gregory Rochester?

25 MR. O'TOOLE: Objection.

1 THE COURT: Sustained. Sustained. Next question.

2 Q (BY MS. HOFFMAN) Did Mr. Meadows answer the questions  
3 that you asked him?

4 A Yes, ma'am.

5 Q And when you met with Mr. Meadows on June 11th of 2007,  
6 what investigation were you conducting?

7 A Initially, ma'am? The murder of Gregory Rochester.

8 Q And you're a homicide detective; is that right?

9 A Yes, ma'am.

10 Q You're not in the gang unit?

11 A No, ma'am.

12 Q To your knowledge, did Mr. Meadows go on to testify in  
13 court about the information he provided you?

14 A Yes, ma'am.

15 Q Did you have a chance to speak with him afterward?

16 A Yes, ma'am, I did.

17 Q Without telling me the substance of what was said, can  
18 you tell me, did he convey any mental impressions about what  
19 that experience of testifying was like for him?

20 MR. O'TOOLE: Objection.

21 THE COURT: Relevance?

22 MR. O'TOOLE: Relevancy to this witness.

23 THE COURT: Right. Sustained. You may approach.

24 (Bench conference on the record.)

25 THE COURT: His mental impressions about the

1 experience of testifying in a state court trial.

2 MS. HOFFMAN: Well, Your Honor, yesterday counsel  
3 called into question Mr. Meadows's motives for testifying and  
4 I'd like to elicit that this detective is aware, based on  
5 observing him after testifying, that he was very scared about  
6 testifying.

7 THE COURT: Keep your voice down.

8 MS. HOFFMAN: And I think it's -- it bears on his  
9 motives for doing it.

10 MR. O'TOOLE: It's pure hearsay.

11 THE COURT: Let's see what happens in  
12 cross-examination with this particular witness. I'm not going  
13 to allow it now. But it's possible on redirect that it might  
14 be admissible, depending upon where defense counsel go in  
15 their cross-examinations. But not right now. Sustained.

16 (The following proceedings were had in open court.)

17 THE COURT: Sustained. Next question.

18 Q (BY MS. HOFFMAN) Sergeant Lloyd, is it common or  
19 uncommon, in your experience as a homicide detective, to, as  
20 an investigation develops, come up with additional questions  
21 that you want to ask of witnesses in the case?

22 A Extremely common, ma'am.

23 Q And did that happen in this case?

24 A Yes, it did.

25 Q Have you kept in touch with Mr. Meadows over the years?

1 A Yes, I have.

2 Q Have there been any material inconsistencies in his story  
3 about what happened?

4 MR. O'TOOLE: Objection.

5 THE COURT: Well, the witness can answer from his  
6 perspective. Overruled.

7 A Never.

8 Q (BY MS. HOFFMAN) In the course of your investigation  
9 into the murder of Gregory Rochester, did you pull historical  
10 911 reports relating to that residence, 221  
11 East 25th Street?

12 A Yes, ma'am, I did.

13 Q What did you find?

14 A There was a nonfatal shooting which occurred at that  
15 location, ma'am, I believe the month prior.

16 Q Were you able to identify who the caller was?

17 A Yes, ma'am.

18 Q Who was it?

19 A I believe his name was Stephen Cioffoni, if I'm not  
20 mispronouncing his name.

21 Q I'm going to show you Government Exhibit P, as in Paul  
22 HI18, which has already been admitted into evidence. Who are  
23 we looking at here?

24 A Mr. Stephen Cioffoni, ma'am.

25 Q Did you interview Mr. Cioffoni about this incident?

1 A Yes, I did.

2 Q Without telling me what Mr. Cioffoni might have said, can  
3 you tell me, did he complete a photo array?

4 A Yes, ma'am, he did.

5 Q Did you interview any witnesses in relation to that  
6 incident?

7 A Yes, ma'am, I did.

8 Q Who was that?

9 A I think it was his girlfriend at the time,  
10 Ms. Mary Ray Lane, if I'm not mistaken.

11 Q Again, without telling me what Ms. Lane might have said,  
12 can you tell me, did she complete a photo array?

13 A Yes, ma'am, she did.

14 Q Did you ultimately charge someone with that shooting?

15 A Yes, ma'am, I did.

16 Q Who was that?

17 A Mr. Gerald Johnson, also known as Geezy, seated here in  
18 the courtroom.

19 Q Can you -- I think you already pointed out an article of  
20 his clothing actually. I'm going to show you  
21 Government's Exhibit No. SC 9. And first let me ask you, to  
22 your knowledge, was Mr. Johnson convicted of some or all of  
23 those charges?

24 A Yes, ma'am, he was.

25 Q Do you recognize this document?

1 A Yes, ma'am.

2 Q I'm going to direct your attention to page 5 of the  
3 document.

4 A Okay.

5 Q Can you tell us what this indicates?

6 A This is the disposition document with the results of that  
7 event there in court. You want the date that's ascribed to  
8 it?

9 Q Yes, if you could read the disposition, the date, and the  
10 charge.

11 A The disposition, ma'am, is that he was convicted. Again,  
12 guilty. And the date on it, ma'am, is March 31st, 2008,  
13 military time almost. And he's charged with second degree  
14 assault, ma'am.

15 Q And turning your attention to page 6 of the document, can  
16 you read the same three items for us here; disposition, date,  
17 and charge?

18 A Yes, ma'am. Disposition of guilt, ma'am. The date again  
19 is March 31st, 2008, and the charge was second degree assault,  
20 ma'am.

21 Q And then turning your attention to page 8 of the same  
22 document.

23 A Uh-huh. Guilty, ma'am. The date of that is  
24 March 31st, 2008, and he was charged with handgun on person,  
25 ma'am.

1 MS. HOFFMAN: No further questions, thank you.

2 THE WITNESS: Yes, ma'am.

3 THE COURT: Cross-examination. Mr. O'Toole.

4 MR. O'TOOLE: Yes, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. O'TOOLE:

7 Q Good afternoon or good morning -- good afternoon.

8 A Good afternoon.

9 Q I'm Jeffrey O'Toole, I represent Mr. Johnson.

10 A A pleasure.

11 Q I want to ask you about the first time you met  
12 Mr. Meadows. Where was it that you met him?

13 A My office, 601 -- which is at 601 East Fayette Street on  
14 the 5th floor.

15 Q And that was back in June of -- in June of 07; correct?

16 A Yes, ma'am -- I'm sorry, yes, sir. Please forgive me.

17 Q Had you spoken to him before or communicated with  
18 Mr. Meadows before you met him in your office?

19 A Prior to that date, no, sir.

20 Q So before the day that you met him in your office you had  
21 never spoken to him or met him before?

22 A Never.

23 Q How was it that he ended up in your office?

24 A He was transported to my office by --

25 Q I'm sorry?

1 A Transported to my office, sir. By whom, I can't recall.  
2 I know it was uniformed officers.

3 Q Did you request he be brought to your office?

4 A I don't recall, sir.

5 Q He didn't show up all by himself accompanied by somebody  
6 else; correct, or did he?

7 A He showed up in the company of officers that had him in  
8 custody.

9 Q So he was in custody, was he in state custody or federal  
10 custody?

11 A I think that was state, sir, if I'm not mistaken.

12 Q State custody?

13 A Yes.

14 Q Did he tell you why he was there?

15 A Yes.

16 Q All right. And was he in handcuffs, did they take him  
17 out of the handcuffs, how did that work?

18 A He was initially in handcuffs but taken out of handcuffs  
19 by myself, sir.

20 Q What is the environment like in your office, is it  
21 intimidating or is it fairly comfortable?

22 MS. HOFFMAN: Objection.

23 THE COURT: Well, intimidating is a relative  
24 concept. Maybe you could rephrase the question. Sustained.

25 Q (BY MR. O'TOOLE) Sure. Is it a comfortable place to



1 talk to you?

2 A I try to make it as comfortable as I can make it, sir,  
3 but I can't speak on the perception of the other individual.

4 Q Right. But you spend time there and you try to make it  
5 comfortable; right?

6 A Yes, I do.

7 Q So if somebody comes in, you want them to be comfortable  
8 as well; correct?

9 A Yes, sir.

10 Q So when Mr. Meadows came into your office, did he feel  
11 like he was comfortable enough to talk --

12 MS. HOFFMAN: Objection.

13 THE COURT: Sustained.

14 Q (BY MR. O'TOOLE) Was there any reason for you the  
15 believe -- did he appear to be uncomfortable to you?

16 A No, sir.

17 Q All right. And did he appear to be under the influence  
18 of any narcotics or alcohol or anything?

19 A He wasn't, no, sir.

20 Q Did he appear to be -- did he appear to you to be nervous  
21 or afraid to be talking to you?

22 A As I recall, maybe somewhat apprehensive, if I can use  
23 that word.

24 Q Isn't it true that he arrived in your office because he  
25 sought to talk to you; isn't that correct?

1 A I would have to say --

2 MS. HOFFMAN: Objection. Asked and answered.

3 THE COURT: It's cross-examination. Overruled.

4 Q (BY MR. O'TOOLE) Isn't it true that he sought to come to  
5 you to talk to you about the crime that you talked about on  
6 direct examination; correct?

7 A Not seeking me out particularly, sir, but I would say  
8 yes.

9 Q Because you were involved in the investigation of that  
10 murder; right?

11 A Yes, sir.

12 Q All right. So when he arrived, did he say to you  
13 anything about why he was there at the very beginning?

14 A Not that I recall, sir.

15 Q Did he go right into saying to you that, I'm here because  
16 I -- or something to the effect of, I have something to tell  
17 you about the crime on the murder that we're talking about in  
18 this case?

19 A Yes, sir.

20 Q All right. So that's -- he told you right away that's  
21 why he was here to talk to you; correct?

22 MS. HOFFMAN: Objection.

23 THE COURT: Basis.

24 MR. MARTINEZ: Hearsay.

25 THE COURT: Overruled.

1 A I don't recall, sir --

2 Q (BY MR. O'TOOLE) All right.

3 A -- how much time --

4 Q But at some point pretty early in the conversation, you  
5 began talking about the murder that took place in January of  
6 the same year?

7 A At some point during the discourse, sir, yes.

8 Q I'm sorry, could you speak up?

9 A At some point during that discourse, yes.

10 Q Did he say anything to you to the effect of, I'm here  
11 because I saw a murder of a 16-year-old person recently, to  
12 your memory?

13 A That's, I think, an additional investigation that I was  
14 the detective on during that time, yes, sir.

15 Q But in that conversation did he say to you, I'm here  
16 because the guns in the street are too much and I just have to  
17 talk to you? He didn't say that, did he, sir?

18 A I don't recall, sir.

19 Q All right. You spoke to him for how long, if you  
20 remember?

21 A I don't recall, sir.

22 Q I mean, an hour, two hours, how long does something like  
23 this take?

24 A There's was no typical time frame, sir.

25 Q All right. But you had to take time, enough time, to

1 show him -- or for you to show him a photo spread; right?

2 A Yes, sir.

3 Q All right. And he told you his story and you read him  
4 the warning on the front of the photo spread.

5 A It's not a warning, sir, it's instructions.

6 Q Right. And he picked out a picture and then he turned it  
7 over and written something on the back; correct?

8 A He confirmed the identity of the person that he made  
9 mention about, yes, sir.

10 Q So that's the routine, so that's what you talk about. In  
11 your direct testimony, you told us that the murder was done by  
12 two people; correct?

13 A Yes, sir, as he told me.

14 Q All right. And he mentioned the name Geezy by saying  
15 that it was in Geezy's house; correct?

16 A Yes, sir.

17 Q All right. Now, at that point Geezy was not in any way a  
18 suspect in your investigation, was he?

19 A No, sir.

20 Q All right. He was just -- he was the occupant of the  
21 building some floors above where the murder took place;  
22 correct?

23 A During that time, yes, sir.

24 Q All right. So is there anything about your memory of the  
25 conversation you had with Mr. Meadows that would have

1 prevented him from telling you everything that you knew --  
2 that he knew at that time?

3 A Aside from my form of questions, sir, no, just a typical  
4 conversation during that time.

5 Q And you've been -- you've been a homicide detective for  
6 how long, how many years, 19 years, 18 years?

7 A 18 years, sir.

8 Q So you're pretty experienced, aren't you?

9 A Probably.

10 Q All right. Not as old as some of us, but you're  
11 experienced?

12 A I'm getting there, sir.

13 Q Now, so when -- you have your means and you have your  
14 ideas of how to conduct an investigation, don't you?

15 A Yes, sir.

16 Q And when Mr. Meadows came to you and told you that he --  
17 and he came to you in custody, he initiated the conversation,  
18 and you had him in front of you trying to solve an unsolved  
19 murder; correct?

20 A Correct, sir.

21 Q So when you had that conversation, isn't it true that you  
22 would have found out from him everything that he knew about at  
23 that time?

24 A On that particular portion of the investigation, yes, but  
25 I would also conduct follow-up investigations based on that

1 information and as it evolves, yes, if I have further  
2 questions.

3 Q Correct. But as you told counsel, as you're telling us,  
4 when you talked to him that day in your office, did he mention  
5 anything about the murder being ordered by anybody?

6 A Not during that time, no, sir.

7 Q All right. Did he talk about another neighborhood,  
8 another gang somewhere else all together?

9 A Not during that time, that I recall.

10 Q What is L and B, do you know what L and B stands for?

11 A Say that again, sir.

12 Q L and B.

13 A L and B.

14 Q Yeah, a neighborhood, L and B.

15 A Lanvale and Barclay.

16 Q Correct. And what is that, is that a nearby  
17 neighborhood?

18 A Yes, it is.

19 Q And did Mr. Meadows talk about that neighborhood?

20 A Not that I recall, sir.

21 Q All right. And if he had talked about it, you would have  
22 written it down in your notes; correct?

23 A Probably, sir.

24 Q And if he had told you that anybody ordered any kind of a  
25 killing, you would have written that down, wouldn't you

1 have?

2 A Either then or audio preserved it, yes.

3 Q All right. And this interview was recorded; correct?

4 A Correct, sir.

5 Q And have you gone back and reviewed the recording?

6 A Not recently, no.

7 Q All right. Have you ever reviewed it or listened to  
8 it?

9 A It's been quite some time, sir.

10 Q All right. Do you have any memory that was not written  
11 down in your notes that he talked about who -- that somebody  
12 ordered this killing, that you didn't write down?

13 A During the follow up interview, yes.

14 Q All right. So there came a time when Mr. Meadows came  
15 back to see you; is that correct, sometime later?

16 A That's correct, yes, sir.

17 Q You talked about January 23rd, 2008; correct?

18 A Can't recall the date, but he did come back.

19 Q Approximately six months later; right?

20 A Yes, sir.

21 Q Did you see him or talk to him in the meantime?

22 A Not that I recall, sir.

23 Q All right. Did he come back to your office in custody  
24 with somebody else bringing him back to your office to talk to  
25 you again before that time in January?

1 A I don't believe so, sir.

2 Q So it was a good six months before he came back to see  
3 you; correct?

4 A If the dates are accurate.

5 Q Approximately.

6 A Yes.

7 Q And at this time he had occasion to give you more  
8 information and filled out another -- or looked at another  
9 photo spread; correct?

10 A I developed additional information, sir, regards and I  
11 went to speak with him, yes.

12 Q All right. And it was only then, six months later that  
13 he had something to say about the L and B neighborhood and  
14 some ordering of something; correct?

15 A If my memory is correct, that portion of the questioning  
16 and his responses, yes, sir.

17 Q All right.

18 MR. O'TOOLE: Your Honor, I have no further  
19 questions. Thank you.

20 THE COURT: Thank you. Mr. Bussard.

21 CROSS-EXAMINATION

22 BY MR. BUSSARD:

23 Q Good afternoon, Detective.

24 A How are you doing, sir?

25 Q You were the lead detective in January 2007?



1 A Yes, sir, I was.

2 Q And that assignment's made from higher up in the chain of  
3 command in Baltimore Police Department?

4 A I would say so, yes.

5 Q And you were investigating the homicide of  
6 Gregory Rochester on January 9th, 2007; correct?

7 A Correct, sir.

8 Q And you -- the -- I think you've already testified that  
9 as a result of the investigation, and we'll talk about that in  
10 a few minutes, but the investigation between January of 2007  
11 and June 11th, '07 was essentially an open case with no known  
12 suspects; is that right?

13 A Correct, sir.

14 Q Until Mr. Meadows --

15 A Yes, sir.

16 Q -- came in?

17 So Mr. Meadows is brought over at his request on  
18 June 11th, '07 to speak to law enforcement?

19 A I would say yes, sir.

20 Q And law enforcement brought him over, he didn't -- he was  
21 already in custody; is that right?

22 A Yes, sir.

23 Q He had been arrested on some unrelated charge; is that  
24 right?

25 A That's correct.

1 Q And you had occasion to meet with him and you were  
2 accompanied by Detective Nickelson?

3 A I can't recall who was with me, but --

4 Q You're not disputing that, I guess?

5 A I'm not going to dispute it, no.

6 Q And the meeting room that you had was one of the  
7 interview rooms about an eight by ten or ten by ten room?

8 A Around about.

9 Q Give your take?

10 A Yes.

11 Q Was it equipped with audio and video recording devices?

12 A During that time, sir. We didn't have video, but we had  
13 audio.

14 Q And was there a recording in fact made of the  
15 interview?

16 A Yes, sir.

17 Q That was an audio recording?

18 A Correct, sir.

19 Q And after that recording is obtained, what do you do with  
20 it?

21 A That's submitted to our evidence control section, sir.

22 Q Do you do that personally?

23 A Yes, sir, most oftentimes.

24 Q And have you -- I think counsel asked you a few minutes  
25 ago, have you had a chance to review that audio recording of

1 the interview?

2 A Again, it's been a while, yes.

3 Q Have you also reviewed a transcript of that interview  
4 that you conducted with Mr. Meadows?

5 A Sometime ago.

6 Q Would that have been last year at Mr. Jones's state  
7 trial?

8 A I think so.

9 Q Now, when you meet with Mr. Meadows -- one of the first  
10 questions you always ask at the interview is are they under  
11 the influence of any drugs or alcohol.

12 A Drugs or alcohol, uh-huh.

13 Q That's an important factor to consider because if they're  
14 under the influence of some substance --

15 A Yes, sir.

16 Q -- their credibility might be in jeopardy; is that  
17 correct?

18 A I would say so, yes.

19 Q So you did ask that question?

20 A Yes, sir.

21 Q And medications as well?

22 A Yes, sir.

23 Q And when you have this first meeting -- you indicated  
24 that the room is equipped with recording devices. Was the  
25 initial -- was there an initial meeting with Mr. Meadows

1 before the recording device was turned on?

2 A No, sir, it's concurrent.

3 Q So the first words that would appear on that tape are the  
4 first words that were between you and Mr. Meadows?

5 A No, sir.

6 Q Is there -- what's a preinterview meeting?

7 A There's actually no such thing as a preinterview. It's  
8 concurrent, it's like if you walk into a doctor's office. We  
9 have to assess what may be wrong with you. If something's  
10 wrong, you see the doctor. So in our particular avenue of a  
11 discussion, we're asking whether you do have information  
12 pertinent to an investigation. We speak about that to see if  
13 that information is relevant to the investigation. If it is,  
14 we seek your permission to record you and then we do such and  
15 we memorialize that.

16 Q And then the recording device is turned on to conduct the  
17 interview?

18 A With their permission, yes.

19 Q Thank you. Now, is it fair to say and accurate to say  
20 that when Mr. Meadows came over, you didn't have a photo array  
21 waiting for him?

22 A No, sir. We didn't have any suspects at that point in  
23 time, sir.

24 Q So did you create the photo array yourself?

25 A Yes, sir.

1 Q And the -- when you construct a photo array, you're  
2 working, first off, off information that Mr. Meadows gave you;  
3 is that correct?

4 A That is correct, sir.

5 Q And Mr. Meadows provided a street name, a full name, a  
6 partial name, what kind of information did he provide about  
7 Mr. Jones?

8 A My recollection proves correct, I think he knew the name,  
9 sir, along with the nickname.

10 MR. BUSSARD: Court's indulgence.

11 Q (BY MR. BUSSARD) So when you -- he gave you, you believe  
12 a street name or a nickname?

13 A I think both.

14 Q Both?

15 A If I'm wrong, I think it was both.

16 Q I think it was Kenny and Slay?

17 A Yes.

18 Q And from that information you were able to identify  
19 Mr. Jones?

20 A Yes.

21 Q And when you construct the photo array, was that done  
22 manually or by a computer?

23 A Both.

24 Q Both?

25 A I had to manually work the computer.

1 Q And the manual part is -- do you decide which photographs  
2 go into the photo array?

3 A Along with the person that the person described, which is  
4 Mr. Christopher Meadows, yes, sir.

5 Q Are these photographs only of persons from the specific  
6 neighborhood where Mr. Jones lives?

7 A No, sir.

8 Q So they may not even be from the Baltimore area?

9 A That is correct, sir.

10 Q So in fact, this photo array, and I'll show you what's  
11 been admitted into evidence as PH -- Government's PHA 4. Can  
12 you see that?

13 A Yes, sir, I do.

14 Q And the -- this is Mr. Jones; correct?

15 A Yes, sir.

16 Q And then the five other people may be people who are not  
17 even from Greenmount area.

18 A That's correct.

19 Q And that's the area we're talking about, the Greenmount  
20 area of Baltimore City.

21 A That is correct, sir.

22 Q And these people may in fact have absolutely nothing to  
23 even do with Baltimore area; is that correct?

24 A That's correct, sir.

25 Q And you don't have any reason to believe that any of

1 these five other people may have the name Kenny or Slay?

2 A I have no reason whatsoever, sir.

3 Q So when you pick it out, you isolate Mr. Jones by saying  
4 that this is the only Kenny in the photo array?

5 A Based on the person that we're speaking with, in this  
6 particular instance, Mr. Christopher Meadows, he's confirming  
7 that this is the person that he's describing.

8 Q And when you construct this photo array, I take it the  
9 computer part of the photo array is the -- when you put it in  
10 some kind of software to print out, this -- what we're looking  
11 at here, PHA 4, which has the instructions up at the top and  
12 then --

13 A Yes, sir.

14 Q -- six pictures underneath.

15 A Yes, sir.

16 Q And is it a -- actually, a two-sided document like this  
17 with blank writing space on the back?

18 A Yes, sir.

19 Q Now, are you familiar with the term "double-blind"?

20 A Yes, sir.

21 Q Okay. What is a double-blind?

22 A It's a recently developed method, which is similar to  
23 this photographic array. It's a different process.

24 Q And the difference is that although you would do it --  
25 the interview of the person providing the information, you

1 would not be the person presenting the information; is that  
2 correct?

3 A That is correct.

4 Q In 2007 was the -- and that -- well, let me back up for a  
5 minute. Is that to ensure that there won't be any sense  
6 coming from you, for want of a better word --

7 A I would call it suggestiveness.

8 Q -- to the person making that identification?

9 A That is correct, sir.

10 Q And was the double-blind photo array technique being used  
11 in Baltimore City in 2007?

12 A No, sir, it wasn't.

13 Q And it's fairly recent?

14 A Yes, sir.

15 Q Innovation?

16 A Yes, sir.

17 Q So it's your testimony that you presented this photo  
18 array, Government's PHA 4?

19 A Yes, sir.

20 Q To Mr. Meadows?

21 A Yes, sir.

22 Q Now, in -- in the course of your investigation, starting  
23 January 9th all the way up through June 11th, 2007, before  
24 speaking with Mr. Meadows, it was clear that Mr. Meadows was  
25 not an eyewitness to the murder; is that correct?



1 A That is correct, sir.

2 Q And regarding the June 11th meeting, aside from the  
3 interview and Government's Exhibit PHA 4, which is the photo  
4 array, did Mr. Meadows provide you with any other documents?

5 A During that time, sir?

6 Q At that time, June 11th, 2007.

7 A Is that the second encounter?

8 Q That's the first meeting with Mr. Meadows.

9 A No, sir.

10 Q And are there any other notes that you may have  
11 maintained memorializing this meeting aside from PHA 4?

12 A Not that I recall, sir.

13 Q Now, there was also a second photo array, and I'll ask  
14 the same questions. Mr. Meadows also mentioned somebody by  
15 the name of Foo; is that correct?

16 A That's correct.

17 Q And Foo -- he did not know the person's real name; is  
18 that correct?

19 A This I don't recall, sir.

20 Q Did you, in the construction of the photo array, simply  
21 put in the name Foo, spelled F-o-o and --

22 A That's a possibility, sir.

23 Q You don't have a recollection of exactly how you  
24 constructed the government -- this is Government's Exhibit  
25 PHA 3 on the screen.

1 A As I recall the investigation, sir, this person was also  
2 implicated by way of his nickname to another endeavor under  
3 investigation, and this person was enveloped in that endeavor  
4 to be in that area. So based on my investigation, this person  
5 corresponded to Mr. Charles Pace as his government name, to  
6 also include that nickname.

7 Q And again, the same questions: Do you have any knowledge  
8 of whether the other five people in this photo array are from  
9 the Greenmount area of Baltimore City?

10 A They're probably not, sir.

11 Q And do you have any information to believe that their  
12 name is Foo or Charles Pace or any other name, for that  
13 matter?

14 A I'm sure they're not Foo or Charles Pace, no.

15 Q When you're talking to Mr. Meadows, does Mr. Meadows  
16 during his interview, provide you with any descriptions as far  
17 as height, weight, tattoos, any unique features of any the  
18 individuals he's talking about?

19 A He may have, sir, but I don't recall right now aside from  
20 the nickname and maybe the -- excuse me, the government  
21 name.

22 Q Would that be a factor that you would taken into  
23 consideration when you're putting together these photo  
24 arrays?

25 A If I need to, yes.

1 Q Mr. Meadows had no control over the photo array; is that  
2 correct? He didn't go through a series of pictures before and  
3 say, you know, this one. It wasn't a one-shot deal of  
4 Kenny Jones; is that right? There was --

5 A I don't understand what you mean.

6 THE COURT: I don't understand the question.  
7 Rephrase the question.

8 Q (BY MR. BUSSARD) Let me try to rephrase that. Did he  
9 have any control over the information or the photographs, the  
10 six photographs that were placed in PHA 4 that's on the screen  
11 there?

12 A He has full control, complete control, sir.

13 Q In the sense of composing the array itself?

14 A No, sir. No.

15 Q So you interviewed -- let me make sure I understand, you  
16 interviewed Mr. Meadows in a preinterview; correct?

17 A No.

18 Q There is no preinterview?

19 A I don't describe a preinterview, no, sir.

20 Q So that -- I'll go back again. Does the tape recording  
21 start the minute he walks in --

22 A No, sir.

23 Q Okay. So there is some kind of -- maybe I'm using the  
24 wrong terminology, there is an interaction between you and  
25 whoever's being interviewed, in this case Mr. Meadows?

1 A Yes, sir.

2 Q As to the information that he may or may not provide to  
3 you?

4 A Yes, there is. Yes.

5 Q And then there's the determination made to turn on the  
6 tape player.

7 A To memorialize it.

8 Q The recording device.

9 A Yes, sir, with their permission.

10 Q So the first words that you would hear on the recording  
11 device are not the first words that were exchanged between you  
12 and Mr. Meadows?

13 A No, sir.

14 Q Now, there came a time in January 23rd of 2008 that  
15 Mr. Meadows was again interviewed; is that correct?

16 A I'm sorry, say that again, sir.

17 Q January 23rd, 2008, about six months after the first  
18 interview.

19 A I can't recall the exact date, but is that second  
20 interview, sir?

21 Q The second interview.

22 A Yes, sir.

23 Q And I think you answered counsel's questions earlier that  
24 it was approximately six months.

25 A Yes, sir.

1 Q After the first interview.

2 A Okay.

3 Q Was that at your invitation or did he ask to come over  
4 for that interview?

5 A My invitation.

6 Q So he was still in custody at that time?

7 A I don't recall, sir.

8 Q And that interview was conducted again at police  
9 headquarters?

10 A Yes, sir.

11 Q In the same kind of room that you previously described?

12 A That's correct, sir.

13 Q And was that interview also recorded video and  
14 auditory -- audio fashion?

15 A Audio, yes, sir.

16 Q And did you again take the recording of that interview  
17 and maintain it in the Baltimore City Evidence Control Unit?

18 A If I took a recorded statement, yes, sir, I did.

19 Q Did there come a time in 2016 that you learned that that  
20 recording no longer exists?

21 A Yes, sir, I did.

22 Q And did you have any information personally as to what,  
23 if anything, happened to that recording of the  
24 January 23rd, 2008 interview?

25 A If my recollection proves correctly, sir, I think it

1 might have been a flood. I'm not too sure. I know our office  
2 did flood at some point in time.

3 Q Would that have been a flood at the  
4 Baltimore Police Department?

5 A Yes, sir, uh-huh.

6 Q And when you went to retrieve it for Mr. Jones's trial,  
7 it was not available; is that correct?

8 A I didn't retrieve it for a trial --

9 Q But you learned through the process that it was not  
10 available even for review?

11 A That's correct.

12 Q So the interview that was conducted on  
13 January 23rd, 2008, is there anything to memorialize that  
14 interview with Mr. Meadows?

15 A I would hope that maybe a transcript, but not that I  
16 recall, sir. You have to speak to the investigators  
17 involved.

18 Q And that would have required having the audio recording  
19 in order to make the transcript; correct?

20 A Correct, sir.

21 Q There was nobody sitting there with like  
22 Madame Court Reporter here taking down Mr. Meadows's word; is  
23 that correct?

24 A No, we don't have a person like that.

25 Q It all happens later on?

1 A Yes, sir, that's correct.

2 Q And those transcripts are prepared, for the most part, by  
3 a department within the Baltimore Police Department?

4 A A transcriber, uh-huh.

5 Q What happened to Mr. Pace?

6 A He was murdered.

7 Q Okay. And then the person that was identified -- there  
8 was a person identified, I think you answered government  
9 counsel's questions. There was a person interviewed on  
10 January 23rd, 2008, Mr. Fenner, I'm showing  
11 Government's Exhibit PHA 5 that's been admitted.

12 A Yes, sir.

13 Q And do you know this person?

14 A Do I know him?

15 Q I mean, do you know his name?

16 A Donatello Fenner.

17 Q What happened to Mr. Fenner?

18 A He was murdered.

19 Q So two of -- and Mr. Meadows's first saying there was two  
20 people involved in the shooting of Mr. Rochester, then  
21 Mr. Meadows on January 23rd, added Mr. Fenner to the list to  
22 make it three persons involved; is that correct?

23 A He initially described two shooters and then thereafter  
24 Mr. Fenner, yes.

25 Q As a participant?

1 A Yes, uh-huh.

2 Q And Mr. Fenner is no longer with us; is that right, he's  
3 deceased?

4 A He's gone.

5 Q I want to ask you a little bit about the crime scene.  
6 You get assigned to the crime scene and you go to that  
7 location; is that correct?

8 A Yes, sir.

9 Q And when you arrive in the early morning hours of  
10 January 9th, 2007 at 221 25th Street --

11 A East 25th Street.

12 Q Was there law enforcement already on the scene that  
13 day?

14 A Yes, sir.

15 Q And are they the normal patrol officers that get the  
16 call?

17 A That is correct, sir.

18 Q Was the crime scene -- well, what is the crime scene  
19 unit?

20 A I beg your pardon, sir?

21 Q What is the Crime Scene Unit?

22 A They're a technical unit that's assigned to the  
23 Baltimore Police Department that operates at our discretion to  
24 respond as we facilitate the collection of evidence and to  
25 collect those things called evidence.



1 Q Were they on the scene at that point when you arrived?

2 A Not that I recall, but I don't think so. I think we  
3 called them out.

4 Q Is that your duty as lead detective to call the mobile  
5 crime scene unit or does somebody else make that assignment?

6 A Most oftentimes it's myself, the detective, I'm sorry.

7 Q And the CC number, you know what a CC number is?

8 A Yes, sir, I do.

9 Q And what is the CC number?

10 A That's the report number, complaint number, is what it's  
11 called.

12 Q And that follows the entire investigation; is that  
13 correct?

14 A Yes, sir, it does.

15 Q And do you assign that number or is that, again, assigned  
16 internally at the Baltimore Police Department?

17 A The operator, the dispatcher.

18 Q And once you have that number, that number goes on every  
19 document that's prepared; is that correct?

20 A Yes, sir for the most part.

21 Q Now, you arrived at the scene, there's law enforcement on  
22 the scene. Had any witnesses been identified at that point?

23 A Just subjects that were there, but no witnesses, sir.

24 Q And 221 East 25th Street is a multi-unit dwelling; is  
25 that correct?

1 A Yes, sir.

2 Q Would it be described as a rooming house, a boarding  
3 house or --

4 A Yes, sir.

5 Q -- were there actual apartments within that building?

6 A It had individuals, to my understanding, that were  
7 squatting there, but it was a rooming house, to my  
8 understanding, at some point.

9 Q And when you arrived, had certain residents already been  
10 identified for you?

11 A I believe so.

12 Q And then is it your testimony, I just want to be clear,  
13 you called the mobile crime scene tech unit?

14 A I believe so.

15 Q And they eventually arrive on the scene, is it one person  
16 more than one person that arrives?

17 A I can't recall, but sometimes it's more than one.

18 Q And do you know who -- is there one particular person  
19 that's the lead mobile crime scene tech for each --

20 A No, sir.

21 Q Do you recall who the crime scene tech was that was  
22 assigned to this investigation?

23 A I think --

24 Q On January 9th, 2007.

25 A Yes, sir. If my recollection proves correct, sir, it's

1 Technician Nuttroy, N-u-t-t-r-o-y. And there might have been  
2 someone else with that technician, but I can't recall their  
3 names.

4 Q Is her first name Carmella, does that sound familiar?

5 A I --

6 Q I know, it's been ten years.

7 A I couldn't tell you.

8 Q Had you taken any photographs of your own before they  
9 arrived, before crime scene tech had arrived?

10 A No, sir.

11 Q Had you identified in any manner what you would call the  
12 crime scene?

13 A Yes, sir.

14 Q Okay. And the crime scene was essentially on what floor  
15 in the -- in 221 East 25th Street?

16 A The first floor.

17 Q First floor?

18 A Uh-huh.

19 Q And this is a three-story dwelling, I think is what you  
20 said.

21 A Yes, sir, around about.

22 Q So you were on the first floor and the first floor is  
23 actually at the top of the front steps there?

24 A As soon as you come into the front door, yes, sir.

25 Q You don't walk in straight off the street. You go up the

1 steps and into -- is there a porch of some sort?

2 A There's a porch coming from the steps, from the sidewalk,  
3 onto the porch, into the front, and there you are.

4 Q So this dwelling then has what's called a basement, I  
5 guess underneath of that?

6 A I believe so.

7 Q And then it has a floor above, the third floor?

8 A Correct.

9 Q And one photograph that government's counsel showed you  
10 had several doors around the periphery of this common area.

11 A Yes, sir.

12 Q Were they each individual dwellings?

13 A Rooms, I would say.

14 Q Rooms?

15 A Yes, sir.

16 Q And so is it fair to say the crime scene was that common  
17 area --

18 A It was.

19 Q -- where Mr. Rochester's body --

20 A Yes, sir.

21 Q Did there come a time that you spoke to all the residents  
22 of 221 East 25th Street?

23 A Yes, sir.

24 Q And as a result of that, were you able to develop any  
25 eyewitnesses?

1 A No, sir.

2 Q Did there come a time that you further identified a  
3 larger or expanded the area of the crime scene in any manner  
4 to include outside?

5 A As far as -- the crime scene itself was contained inside  
6 the house. What we do is called an area canvass, which is not  
7 in the area particular of the crime scene but to ascertain if  
8 there's any potential witnesses outside of that crime scene,  
9 yes.

10 Q As a result of doing that, were any eyewitnesses  
11 developed?

12 A No, sir.

13 Q And did you also have occasion to examine CCTV and blue  
14 light cameras and anything else that might have been in the  
15 area?

16 A An attempt to locate, yes, sir.

17 Q And as a result of that examination, was there any  
18 eyewitnesses?

19 A No, sir.

20 Q And you did find some recordings of CCTV or --

21 A No, sir.

22 Q No?

23 A No, sir.

24 Q Now, when -- going back to when the crime scene tech is  
25 there. There were some photographs shown to you earlier,

1 shell casings, and they had these little yellow placards with  
2 numbers on them.

3 A Yes, sir.

4 Q Do you place those placards there?

5 A No, sir.

6 Q That's all crime scene?

7 A Correct.

8 Q Do you walk around before that's even done and with the  
9 crime scene tech to point out individual locations?

10 A Yes, sir.

11 Q So you are making a determination of what you consider to  
12 be evidence that you want documented; is that correct?

13 A I would say we, but I facilitate it largely, yes.

14 Q So when you walk around and you see a shell casing, for  
15 instance, you point to it and the crime scene tech places that  
16 little placard there?

17 A Yes, sir.

18 Q Is the photograph taken right away?

19 A No, sir.

20 Q And do you immediately after it's identified and picked  
21 up, do you pick it up -- you just pick it up as the lead  
22 detective?

23 A No.

24 Q So you said Crime Scene Tech Nuttroy, I hope I'm  
25 pronouncing that correctly, that -- she's the person that

1 picks it up?

2 A The technician, yes.

3 Q And does she do anything special when she's picking up  
4 this item?

5 A Submit it to our Evidence Control Section per our  
6 discretion.

7 Q Well, I'm being a little more basic than that. When she  
8 bends over to pick it up, is she gloved?

9 A Yes, sir.

10 Q And she puts it in an envelope, and we had -- Court's  
11 indulgence for a moment. We had Government's Exhibit 25, it  
12 was a package of cartridges, do you recall that?

13 A Yes, sir, I do.

14 Q And there was writing on that package on the outside?

15 A Yes, sir.

16 Q Is that your writing?

17 A No, sir, that's not.

18 Q That's --

19 A The technician.

20 Q That's the technician's writing?

21 A Correct, sir.

22 Q So the only thing you have given her at some point is the  
23 CC number?

24 A She already has it, but yes.

25 Q And then everything else that appears on that package is

1 her writing?

2 A Correct.

3 Q And everything that's in that package is collected by  
4 her, not you; correct?

5 A It's picked up by her and facilitated by me.

6 Q So she -- is it a sealing process that goes on, does she  
7 seal that package after she hands it -- before she hands it to  
8 you?

9 A Say that again, sir.

10 Q When she puts the cartridges in the package?

11 A Uh-huh.

12 Q Is there a sealing process, does she seal the package  
13 before she hands it to you?

14 A She doesn't hand it to me, sir. She keeps it maintains  
15 it. It's sealed and is transported to the Evidence Control  
16 Section.

17 Q So it's her responsibility to preserve that evidence for  
18 later use?

19 A Correct, sir.

20 Q And it is also the crime scene tech's responsibility to  
21 take it to Baltimore Police Headquarters?

22 A Yes, sir.

23 Q And that unit is called ECU; is that correct?

24 A The Evidence Control Unit, yes, sir.

25 Q And can you just very briefly describe what happens, if



1 you know, what happens once an item is submitted to ECU?

2 A It's logged into a database system, sir, and then it's  
3 stored and maintain there. That's pretty much it.

4 Q Do you -- did you have any occasion to take that package,  
5 GS25, out of ECU?

6 A No.

7 Q So it was -- it stayed in ECU as long as you're aware,  
8 forever?

9 A Unless it's removed for examination by way of our firearm  
10 examiners, I don't touch it until we come to court, sir, if we  
11 do get to court.

12 Q You never saw that package again until Mr. Jones's trial  
13 on -- last year?

14 A I believe you're right.

15 Q And the photograph of those cartridges, it was PHP25,  
16 that was shown to you earlier, you again said you didn't take  
17 any photographs?

18 A Personal photographs?

19 Q Personally.

20 A No, sir. No.

21 Q Do you have any knowledge at all of where, if any, that  
22 package, GS25, do you know what happens to it after it gets  
23 into ECU and goes through the database, do you know what --  
24 how it's handled after that?

25 A Chain of custody, sir, would be in this particular

1 instance in the investigation, if it's compared to another  
2 investigation at my direction, the firearms examiner would  
3 retrieve that, and then return it back to ECU. That would be  
4 it.

5 Q And you're talking general terms because you're not the  
6 person that took it out for the firearms exam; is that  
7 correct?

8 A No, sir.

9 Q In fact, your testimony is that you didn't touch it  
10 anymore.

11 A No, sir.

12 Q You had other investigators during -- that took over this  
13 investigation around 2013; is that correct?

14 A That is correct, sir.

15 Q That would be Detective Veney?

16 A Detective Mark Veney, yes.

17 Q And was it Detective Sergeant Landsman?

18 A Landsman, yes, sir.

19 Q And they were part of another investigation; is that  
20 correct?

21 A Yes, sir.

22 Q Okay. And you have no other responsibilities as far as  
23 the events of January 9th, 2007 after that time or did you  
24 remain a part of the large investigation?

25 A No, sir, actually, I was -- been promoted and reassigned

1 briefly.

2 Q So the best of your knowledge, when the crime scene tech  
3 was at the location of 221 East 25th Street, did -- were  
4 fingerprints attempted to be lifted?

5 A Yes, sir.

6 Q And is that a common request made by the lead detective  
7 of the crime scene tech?

8 A Sometimes, yes.

9 Q Okay. And as a result of the investigation on January  
10 9th, 2007, were any fingerprints ever lifted that would  
11 identify Kenneth Jones?

12 A We were unable to get any prints, no, sir.

13 Q And you said you attended the autopsy of Mr. Rochester;  
14 is that correct?

15 A That is correct, sir.

16 Q And did they take DNA sampling of when you were there, in  
17 your presence, of the -- of Mr. Rochester's fingernails, under  
18 his fingernails?

19 A Nail clippings, yes, sir.

20 Q Based on your knowledge, was there ever any DNA results  
21 that would have linked Mr. Jones to Mr. Rochester?

22 A Not to my knowledge, sir.

23 Q And the same questions for Mr. Pace and Mr. Fenner.

24 A Beg your --

25 Q Was there any fingerprints of Mr. Pace or Mr. Fenner?

1 A No, sir.

2 Q Ever listed at the crime scene -- lifted, I mean?

3 A No, sir.

4 Q Now, when Mr. Meadows came in six months later and  
5 then -- did he have any kind of recording that had been made  
6 of a conversation between him and Mr. Jones?

7 A Can you repeat that, sir?

8 Q Like a cell phone recording?

9 A Not that I recall, sir.

10 Q Did he tell you that -- he told you that he had talked to  
11 Mr. Jones; is that correct?

12 A Correct, sir.

13 Q After the murder?

14 A Correct, sir.

15 Q And did he have a recording of that on a cell phone or  
16 any other electronic device?

17 A Not that I recall, sir.

18 Q Did he ever tell you that he had a written document from  
19 Mr. Jones that's, in essence, Mr. Jones confessed to  
20 participating in the murder of Gregory Rochester?

21 A No, sir.

22 Q So it's just Mr. Meadows's word; is that correct?

23 A That's correct.

24 Q Did you participate in a further interview of Mr. Meadows  
25 in October of 2013?

1 A No, sir.

2 Q That was part of another investigation?

3 A Yes, sir. Uh-huh.

4 MR. BUSSARD: I have no other questions.

5 THE COURT: Thank you. Mr. Francomano.

6 CROSS-EXAMINATION

7 BY MR. FRANCOMANO:

8 Q Detective, Marquise McCants was not a suspect in this  
9 specific crime; correct?

10 A Who?

11 Q Exactly. Thank you.

12 THE COURT: Redirect.

13 REDIRECT EXAMINATION

14 BY MS. HOFFMAN:

15 Q Just briefly, Sergeant Lloyd. There were a lot of  
16 questions asked of you about the photo arrays that were  
17 provided to Mr. Meadows. Let's start with June 11th of 2007,  
18 that first meeting that you had with him.

19 When you showed those photo arrays to Mr. Meadows, had he  
20 already identified suspects at this point?

21 A Yes, ma'am.

22 Q So you were, I believe you testified on direct, simply  
23 confirming the identities of the people he had named?

24 A That's correct.

25 Q And what about on January 23rd of 2008, was the same true

1 then?

2 A That is true.

3 MS. HOFFMAN: No further questions.

4 MR. BUSSARD: Your Honor, may I just ask two very  
5 brief questions?

6 THE COURT: Within the scope of the redirect.

7 MR. BUSSARD: Yes.

8 THE COURT: From there.

9 RECROSS-EXAMINATION

10 BY MR. BUSSARD:

11 Q You indicated Mr. Jones had -- I mean, Mr. Meadows had  
12 identified Mr. Jones. Was a photograph shown of Mr. Jones  
13 before?

14 A No, no, sir.

15 Q So he just identified him by what you said?

16 A Verbally.

17 Q Kenny and Slay, no photographs?

18 A No.

19 MR. BUSSARD: No further questions.

20 THE COURT: May the witness be excused, Mr. Bussard?

21 MR. BUSSARD: Yes, Your Honor.

22 THE COURT: Mr. O'Toole.

23 MR. O'TOOLE: Yes, Your Honor.

24 THE COURT: Mr. Francomano.

25 MR. FRANCOMANO: Yes, Your Honor.

1 THE COURT: Ladies and gentlemen, we'll take the  
2 lunch break now. During the lunch break, do not discuss the  
3 case with anyone. Do not discuss the case even among  
4 yourselves. Do not allow yourselves to be exposed to any news  
5 articles or reports that touch upon the case or the issues it  
6 presents or articles or reports that relate to any  
7 participants in the case. Avoid all contact with any of the  
8 participants in trial. Do not make any independent  
9 investigation of the law or the facts in the case. Do not  
10 look up anything related to the case or its participants on  
11 the internet. Do not consult an encyclopedia or a dictionary.  
12 2:15. Hour and 15 minutes. Please take the jury out.

13 (Jury left the courtroom.)

14 THE COURT:

15 MR. O'TOOLE: Your Honor, what is this thing you  
16 referred to as an encyclopedia, what is that?

17 THE COURT: Mr. O'Toole, it's particularly alarming  
18 if you at your age don't know what I'm talking about. I have  
19 serious concerns about that. Who's next?

20 MR. MARTINEZ: Next we have Sergeant Kurt Roepcke of  
21 the Baltimore Police. He'll be a short witness.

22 THE COURT: And then after that?

23 MR. MARTINEZ: Then we have the firearm examiner,  
24 Ms. Bohlen -- I'm sorry, Sandra Forsythe, who -- Ms. Forsythe  
25 is a homicide detective, who is formerly with shootings. She

1 secured the crime scene of the shooting of Bubba, also known  
2 as Antonio Oliver, a few days before the Rochester homicide.  
3 They were -- there's evidence recovered from that that was  
4 then the subject of Ms. Bohlen's comparison and she will be  
5 following.

6 THE COURT: That's how the government plans to try  
7 to link it back?

8 MR. MARTINEZ: Yes.

9 THE COURT: Okay. 2:15.

10 (A recess was taken.)

11 THE COURT: Are we ready for the jury?

12 MR. MARTINEZ: Yes.

13 THE COURT: And the next witness is?

14 MR. MARTINEZ: Sergeant Roepcke of the  
15 Baltimore Police Department.

16 THE COURT: Okay. We can bring him forward and  
17 bring the jury in. Sergeant Roepcke.

18 (Jury entered the courtroom.)

19 THE COURT: Be seated, please. Mr. Martinez, the  
20 government may call their next witness.

21 MR. MARTINEZ: Government calls  
22 Sergeant Kurt Roepcke of the Baltimore Police Department.

23 THE COURT: Sergeant Roepcke.

24 THE CLERK: Sir, raise your right hand.

25 SERGEANT CURT ROEPCKE



1 called as a witness, being first duly sworn, was examined and  
2 testified as follows:

3 THE WITNESS: I do.

4 THE CLERK: Thank you. You may have a seat in the  
5 witness box and watch your step. And Sergeant, if you would  
6 adjust that microphone, speak directly into it, state your  
7 first and last name, and spell your first and last name.

8 THE WITNESS: Sergeant Kurt Roepcke, K-u-r-t; last  
9 name is Roepcke, R-o-e-p-c-k-e.

10 THE COURT: R-o-e-p-c-k-e.

11 THE WITNESS: Yes, sir.

12 THE COURT: Thank you, your witness.

13 DIRECT EXAMINATION

14 BY MR. MARTINEZ:

15 Q Thank you. Sergeant Roepcke, good afternoon.

16 A Good afternoon, sir.

17 Q Tell us where you work, please.

18 A I work for Baltimore City Police Department.

19 Q And your rank is sergeant; correct?

20 A Yes, sir.

21 Q How long have you been with the BPD?

22 A The 22 years.

23 Q Could you briefly walk us through the various positions  
24 you've held?

25 A I've been a patrol officer in patrol; I was in the Quick

1 Response Team, which became SWAT; I worked in the  
2 Pennsylvania Avenue Task Force with the Flex Squad; taught at  
3 the Academy; and now with the Marine Unit.

4 Q So the Marine Unit, that's on boats?

5 A Yes, sir. The Marine Unit with the boats and the  
6 Underwater Recovery Team.

7 Q Could you tell us what your rank and assignment was as of  
8 March 2007?

9 A I was an officer in SWAT.

10 Q I want to direct your attention to March 3rd, 2007 just a  
11 few minutes before midnight. Were you working and on duty at  
12 the time?

13 A Yes, sir.

14 Q Did there come a time where you witnessed a traffic  
15 violation near the intersection of Oliver and Gay Streets in  
16 East Baltimore?

17 A Yes, sir.

18 Q I want to show you what's been marked as  
19 Government's Exhibit 17. And I'm going to ask you whether you  
20 recognize that location.

21 A Yes, sir, that's the intersection.

22 Q Could you show us where you were when you witnessed this  
23 traffic violation?

24 A What, do you want me to point at the screen?

25 THE COURT: Just touch the screen and it will show

1 up.

2 THE WITNESS: Okay.

3 THE COURT: Yeah, amazing.

4 THE WITNESS: Yeah.

5 THE COURT: Did you touch it?

6 THE WITNESS: Yes, sir.

7 THE COURT: We've got some tech problems, hold on.

8 Ms. Powell, let's try again. It's because I was bragging  
9 about it. So same problem.

10 THE CLERK: Yeah, it's not --

11 THE COURT: So recover the -- hand the exhibit to  
12 the witness.

13 MR. MARTINEZ: Oh, and just for the record, I said  
14 this was Exhibit 17. This is GM, for Google maps, 17.

15 Q (BY MR. MARTINEZ) Sergeant, I'm going to show you GM 17  
16 and hand you a pen here and ask you to circle as best you can  
17 the location where you were when you saw the traffic  
18 violation.

19 A Can I use my pen? This one isn't working too well.

20 Q Sure. Our technology failed too.

21 A It's the paper.

22 THE COURT: Here, Sharpie.

23 A I was in the southbound lane.

24 THE COURT: Just keep all of them.

25 Q (BY MR. MARTINEZ) Okay. Sergeant, so the red circle is

1 the position of your -- it was your position?

2 A Yes, sir. We were in an unmarked crown Vic.

3 Q Crown Vic, that's a Crown Victoria?

4 A Yes, sir.

5 Q All right. So let's talk about what happened, what type  
6 of traffic violation did you see?

7 A The light turned green, we were getting ready to proceed  
8 south. A gray vehicle went through the light where the driver  
9 was talking on a phone, almost another struck another  
10 vehicle.

11 Q Now, from right to left on the screen, in which direction  
12 was the --

13 A Going from west to east.

14 Q Gotcha.

15 A So that -- yeah. The right side here of this.

16 Q What did you do when you saw the Honda run a red light?

17 A We did a U-turn and went to pull the vehicle over.

18 Q And when you went to pull the vehicle, over what  
19 happened?

20 A We activated our emergency equipment, the lights and  
21 sirens. The vehicle attempted to elude us, making a series of  
22 turns.

23 Q And where did it go next?

24 A I'm not sure the exact streets, but it finally came back  
25 up on Oliver Street, striking another vehicle, where the

1 driver then bailed out of the vehicle.

2 Q So you said after a series of turns it ended up on  
3 Oliver Street; is that right?

4 A Yes, sir.

5 Q Want to show you Government's Exhibit GM 16 and ask you  
6 whether you recognize that location.

7 A That's Oliver Street.

8 Q Okay. And is this the location where you saw the driver  
9 bail out of the car you were chasing?

10 A Yes, sir, after he struck the vehicle.

11 Q And did you chase the driver after he bailed out of that  
12 vehicle?

13 A Yes, sir, I did.

14 Q Were you able the catch him?

15 A Yes, sir, I was.

16 Q Did you place him under arrest?

17 A Yes, sir, I did.

18 Q Were you able to identify the driver after you placed him  
19 under arrest?

20 A Yes, he was identified as Donatello Fenner.

21 Q Like to show you now what's already in evidence as  
22 Government's Exhibit PHI 28. Can you identify that  
23 individual?

24 A That's Donatello Fenner. It's a different photo. He has  
25 dreadlocks different than when I arrested him, but it's the

1 same person.

2 Q So this individual has shorter hair on the day you  
3 encountered him; is that correct?

4 A Yes.

5 Q Okay. Did you conduct a search incident to arrest when  
6 you took Mr. Fenner into custody?

7 A Yes, I did.

8 Q What, if anything, did you find during that search?

9 A He had a .38 caliber revolver in his coat pocket.

10 Q All right. I don't need to ask you anymore -- well, did  
11 he have any other firearms in his pocket?

12 A Yes, another gun was recovered in the vehicle.

13 Q Oh, I'm sorry, well, let's finish the search of the  
14 person. Was the .38 -- was the .38 loaded?

15 A I believe so. I'd have to refer to my notes to know  
16 exactly.

17 Q Well, if there's -- is there something that would refresh  
18 your recollection as to that?

19 A Yes, sir, statement of probable cause or police report.

20 MR. MARTINEZ: May I approach?

21 THE COURT: Yes. Look at that document, once you've  
22 refreshed your memory, look up, and we'll know you've finished  
23 reading.

24 THE WITNESS: Okay, sir.

25 Q (BY MR. MARTINEZ) Having consulted this document, is

1 your memory refreshed?

2 A Yes, sir.

3 Q Can you tell us whether the .38 that you recovered from  
4 Donatello Fenner's person was loaded?

5 A Yes, sir, it was.

6 Q Okay. After you searched Mr. Fenner's person, did you  
7 also search the gray Honda he had been driving?

8 A Yes, sir, we did.

9 Q What, if anything, did you find in the Honda?

10 A There was a Sig Sauer semi-automatic handgun on the  
11 floorboard of the driver's side.

12 Q And the Sig Sauer, what caliber was that firearm?

13 A 9mm.

14 Q Do you recall the serial number?

15 A Not -- I've got to refresh so I get it right.

16 Q Would looking at the document refresh your  
17 recollection?

18 A Yes, sir. It's all in there. That's why we write it  
19 down there.

20 Q Have you looked at the Statement of Probable Cause,  
21 Sergeant, is your recollection refreshed?

22 A Yes, sir, it is.

23 Q You tell us the serial number of the 9mm that you found  
24 in the vehicle?

25 A Yes, sir, it's U union 11, 6968.

1 Q U116968; is that correct?

2 A Yes, sir.

3 Q Was that gun loaded?

4 A Yes, sir.

5 Q Were you able to tell whether that Sig Sauer 9mm had  
6 previously been reported as stolen?

7 A Yes. We ran it through the dispatcher, it came back  
8 stolen.

9 Q And since that time have, have you learned whether or not  
10 the firearm has been returned, the 9mm that is, has been  
11 returned to its lawful owner?

12 A Yes, sir. I learned today that it was.

13 Q After you recovered the 9mm, what, if anything, did you  
14 do with it?

15 A We recovered both weapons and we submitted them to  
16 evidence control, after making them safe.

17 MR. MARTINEZ: Court's indulgence.

18 Q (BY MR. MARTINEZ) Detective -- or Sergeant, rather, do  
19 you recall the CC number associated with this incident?

20 A No, I do not. I'd have to --

21 Q Is there anything that would refresh your recollection?

22 A Yes, sir, I'm sorry.

23 Q And while I'm at it, just to save us a trip, also, do you  
24 recall the serial number associated with the .38 you took  
25 Mr. Fenner's person?



1 A No. I need to see the statement.

2 Q All right.

3 A Can I read it off this or read it to you? I'm not going  
4 to remember both of them. I'll probably get them screwed  
5 up.

6 THE COURT: No objection. Read the two numbers.

7 THE WITNESS: Okay. Sorry. Serial number for the  
8 revolver is N Nancy, A Adam, 47280. And the CC number is  
9 03 Charles 1479.

10 MR. MARTINEZ: Thank you, Sergeant.

11 Those are all the questions we have.

12 THE COURT: Mr. O'Toole.

13 MR. O'TOOLE: We have no questions.

14 THE COURT: Mr. Bussard.

15 MR. BUSSARD: Thank you. May I question from my  
16 position?

17 THE COURT: Absolutely.

18 MR. BUSSARD: Thank you.

19 CROSS-EXAMINATION

20 BY MR. BUSSARD:

21 Q Good afternoon, Sergeant Roepcke.

22 A Good afternoon.

23 Q Looking at a statement from years ago -- when you stopped  
24 this vehicle, was Mr. Fenner the only occupant of that  
25 vehicle?

1 A Yes, sir.

2 Q Only one person bailed out and ran away?

3 A Correct.

4 Q Is that correct?

5 And you've been using the pronoun "we," was there more  
6 than one officer on the scene?

7 A Yes, sir, I had my partner with me.

8 Q And who made the actual apprehension of Mr. Fenner?

9 A I did, sir.

10 Q And you're the one that did the search then of his pocket  
11 and found the weapon?

12 A Yes, sir.

13 Q Is that correct?

14 And that was the Taurus -- or is it the other one?

15 A No, the .38 was in his pocket.

16 Q The .38 was in his pocket and the Sig Sauer then was back  
17 in the vehicle?

18 A Correct.

19 Q Okay. And regarding the CC number, do you assign the  
20 CC?

21 A No, sir, we do not.

22 Q How do you get that CC number?

23 A We call on the radio to our dispatcher and they give us a  
24 CC number.

25 Q And that goes on every package that you have after

1 that?

2 A Every police report?

3 Q Let me back up. When you seized the .38, were you  
4 wearing gloves that day?

5 A I'm not 100 percent sure, sir.

6 Q So when you pull the .38 out of his pocket and you --  
7 what do you with it after that?

8 A So I pull the .38 out of his pocket, we render it safe,  
9 if possible, if the scene is safe. So we -- that's a  
10 revolver, so we empty it out. It's got a cylinder, so you  
11 pull it out, push it forward, and drop the rounds out.

12 Q And what do you do with the rounds and the firearm after  
13 you render it safe?

14 A We put them in an envelope. It's a weapons envelope. So  
15 the casings go in a smaller envelope and the weapon goes in a  
16 bigger white envelope.

17 Q Are those envelopes then sealed by you?

18 A We put Evidence Control tape on them.

19 Q And what do you do with them after this?

20 A They're submitted to Evidence Control.

21 Q And where is Evidence Control?

22 A 601 East Fayette. It used to be in the basement, but now  
23 it's the first floor.

24 Q Is that because of the floods in the basement?

25 A I'm not sure exactly all the reasons why.

1 Q Once it goes into the Evidence Control Unit, do you have  
2 any occasion -- do you have any knowledge of what happens to  
3 it after that?

4 A No, sir, unless we need it for court.

5 Q Had you ever had occasion to pull it out of court?

6 A No, sir. Not that I know of.

7 Q Do you have the Taurus .38 now?

8 A No, sir. I think -- I found it this morning that they  
9 disposed of it, the Evidence Control people did.

10 Q The .38 --

11 A Correct.

12 Q -- was disposed of and the Sig Sauer was returned to its  
13 owner?

14 A Yes, sir.

15 Q So the Baltimore City Police Department is not in  
16 possession of either one of those weapons at this point?

17 A Correct.

18 MR. BUSSARD: I have no other questions,  
19 Your Honor.

20 THE COURT: Mr. Francomano.

21 MR. FRANCOMANO: No questions, Your Honor.

22 THE COURT: Redirect.

23 MR. MARTINEZ: No, thank you.

24 THE COURT: May the witness be excused?

25 MR. BUSSARD: Yes, sir.

1 MR. FRANCOMANO: Yes, Your Honor.

2 THE COURT: You're excused, sir, you may depart.

3 We're rebooting the system, so you're not going to  
4 have any amplification for a few minutes. Let's see if you  
5 can't get started. Who's next?

6 MS. HOFFMAN: The government calls  
7 Detective Sandra Forsythe.

8 THE COURT: Who?

9 MS. HOFFMAN: Detective Sandra Forsythe.

10 THE COURT: Detective Forsythe. Ladies and  
11 gentlemen, I always marvel at those old courtrooms from the  
12 19th century which have those big cavernous courtrooms. And  
13 you remember, there was no amplification. The lawyers must  
14 have had louder voices in the 19th century.

15 MS. HOFFMAN: Sorry, Your Honor.

16 THE COURT: I was speaking more for myself. I think  
17 all of us benefit from amplification. Also, it's tiring.

18 COURT SECURITY OFFICER: Your Honor, the witness is  
19 going to be delayed a couple minutes.

20 THE COURT: All right. You want to look into that?

21 MR. MARTINEZ: Yes, Your Honor.

22 (Pause in the proceedings.)

23 THE COURT: Back on the record. Come forward,  
24 ma'am, please. If you'll come up to our witness box, stop  
25 there, face our clerk.

1 THE CLERK: Okay. Now it's not deleting, Judge.

2 THE COURT: Stop there for a second. Go ahead and  
3 swear the witness.

4 DETECTIVE SANDRA FORSYTHE  
5 called as a witness, being first duly sworn, was examined and  
6 testified as follows:

7 THE WITNESS: I do.

8 THE CLERK: Thank you, ma'am, you may have a seat.  
9 And ma'am, if you would speak directly into the microphone,  
10 state your first and last name and spell your first and last  
11 name.

12 THE WITNESS: Sandra Forsythe, S, as in Sam,  
13 S-a-n-d-r-a, F-o-r-s-y-t-h-e.

14 THE CLERK: Thank you, ma'am.

15 THE COURT: F-o-r-s-y- --

16 THE WITNESS: -t-h-e.

17 THE COURT: Your witness.

18 DIRECT EXAMINATION

19 BY MS. HOFFMAN:

20 Q Good afternoon, Detective Forsythe.

21 A Good morning.

22 Q Are you employed?

23 A Baltimore City Homicide.

24 Q What's your rank in the Homicide Unit?

25 A Detective.

1 Q How long have you worked for the Baltimore Police  
2 Department?

3 A 24 years completed.

4 Q How long have you been in the Homicide Unit?

5 A Eight years.

6 Q Prior to that, what did you do for BPD?

7 A I was a -- district detective unit, K-9, domestic  
8 violence, and patrol.

9 Q And where were you as of January 2007?

10 A District Detective Unit.

11 Q I want to direct your attention to January 4th of 2007.  
12 Were you working and on duty that day?

13 A Yes.

14 Q Did there come a time when you were asked to respond to  
15 the scene of a shooting?

16 A Yes.

17 Q What time of day was it?

18 A Evening time.

19 Q And where were you asked to go?

20 A Barclay and 21st.

21 Q And did you respond there?

22 A Yes.

23 Q Was the victim present on the scene when you arrived?

24 A No.

25 Q Did you eventually learn the identity of the victim?

1 A Yes.

2 Q Who was it?

3 A Antonio Oliver.

4 Q Where specifically was the crime scene located?

5 A In front of 345 East 21st Street.

6 Q And did you secure the crime scene?

7 A Yes.

8 Q What does it mean to secure a crime scene?

9 A Well, basically, I didn't secure it. It was already  
10 secured by patrol. We respond out once the crime scene is  
11 secured.

12 Q Were there photographs taken of the crime scene?

13 A Yes.

14 Q I'm going to show you Government's Exhibit PHCS 12. What  
15 are we looking at here?

16 A That is an Evidence Control envelope.

17 Q And can you read the CC number here?

18 A CC number is 073A1853.

19 Q And --

20 MR. BUSSARD: Your Honor, may we approach?

21 THE COURT: Yes.

22 (Bench conference on the record.)

23 THE COURT: Mr. Bussard.

24 MR. BUSSARD: Your Honor, out of an abundance of  
25 caution, as a result of the last one, I'm objecting to the



1 introduction and admission of the shell casing that we're  
2 about to hear. This was not recovered by Detective Forsythe,  
3 although she may have signed a paper. It was actually  
4 recovered by Crime Scene Tech Dimakakos and her name appears  
5 on that document there at the top as the crime scene tech.

6 THE COURT: Let's at least let the government  
7 attempt to lay a foundation before the objection is  
8 interposed. Let's see if they haven't -- well, let's go down  
9 that road. I note the objection, it's pending. The exhibit  
10 has not been admitted and it won't be admitted now that  
11 there's been an objection, unless the government formerly  
12 moves it. In other words, you can't rely on the local rule  
13 once an objection has been made.

14 (The following proceedings were had in open court.)

15 THE COURT: You may continue.

16 Q (BY MS. HOFFMAN) Detective Forsythe, when we left off, I  
17 had you read the CC number here. Is this the CC number  
18 pertaining to the shooting to which you responded?

19 A Yes.

20 MS. HOFFMAN: Your Honor, I'm sorry to interrupt,  
21 but I think the screens are off now.

22 THE COURT: You may continue.

23 Q (BY MS. HOFFMAN) Detective Forsythe, was anything of --  
24 what, if anything, of evidentiary value was recovered from the  
25 crime scene?

1 A A 9mm shell casing.

2 Q And did you observe that shell casing be recovered?

3 A Yes.

4 Q Was it you personally who physically picked it up?

5 A No.

6 Q But you were there on the scene when it was recovered?

7 A Yes.

8 Q I'd like to show you page 2 of --

9 MR. BUSSARD: Objection, Your Honor.

10 THE COURT: Overruled. You may continue.

11 Q (BY MS. HOFFMAN) Page two of PHSC 12.

12 MR. BUSSARD: Can we have that number again, please,  
13 Counsel?

14 MS. HOFFMAN: It's PHSC 12.

15 THE COURT: Page 2.

16 Q (BY MS. HOFFMAN) What are we looking at here?

17 A That is the crime scene.

18 Q And I'm going to show you another page from that  
19 document. What are we looking at here?

20 A A photograph of the street sign, Barclay and  
21 East 21st Street.

22 Q I'm going to show you one more page of that document.  
23 What are we looking at here?

24 A Another photo of a crime scene, but it has the markings  
25 where the crime lab puts down the markings.

1 Q And finally, I'm going to show you one more page of that  
2 document. What are we looking at here?

3 A The 9mm shell casing and the marking No. 1.

4 Q Okay.

5 MR. BUSSARD: Your Honor, just for the record,  
6 objecting.

7 THE COURT: Noted. Overruled.

8 Q (BY MS. HOFFMAN) Detective Forsythe, what happens when  
9 evidence is recovered from a crime scene?

10 A Well, what happens first, the crime lab tech numbers the  
11 envelope that she's going to put it in and where exactly she  
12 recovered it from. Then after that, after the crime scene has  
13 been secured, she takes everything back to Evidence Control to  
14 be submitted.

15 MR. BUSSARD: Objection, Your Honor.

16 THE COURT: Do you want a continuing objection to  
17 the whole line of questions, Mr. Bussard?

18 MR. BUSSARD: Yes, Your Honor.

19 THE COURT: You have it. Overruled.

20 MR. BUSSARD: Thank you.

21 Q (BY MS. HOFFMAN) And we talked earlier about the CC  
22 number. When evidence is recovered, is it assigned a  
23 particular CC number?

24 A Yes.

25 Q And is it also assigned a property number?

1 A Yes.

2 Q Can you tell us the difference between a CC number and a  
3 property number?

4 A CC number is the CC number you use for the whole entire  
5 case, property number is given individually on each item.

6 Q And once evidence is submitted to the Evidence Control  
7 Unit, does the Evidence Control Unit keep track of when, if  
8 ever, that evidence is removed from the Evidence Control  
9 Unit?

10 A Yes.

11 Q So they document a chain of custody?

12 A Yes.

13 Q Detective Forsythe, once evidence has assigned a CC  
14 number and submitted to the ECU, does that CC number follow  
15 the evidence for the length of the case?

16 A Yes.

17 Q I'm going to approach and show you  
18 Government's Exhibit No. 24 -- I'm sorry, it's  
19 Government's Exhibit 23.

20 THE COURT: Government's Exhibit 23. Let me see it.  
21 Ms. Hoffman.

22 MR. BUSSARD: Again, Your Honor, objection.

23 THE COURT: Noted. Overruled.

24 Q (BY MS. HOFFMAN) Can you read what's written on the  
25 envelope I just handed you?

1 A What's written on the envelope it says, 9mm shell casing;  
2 the date recovered is 1/4/07; from whom recovered; crime  
3 scene, 300 block of East 21st Street; the victim's name,  
4 Antonio Oliver. Officer in the case, Peckoo and District  
5 CID.

6 Q And would you mind opening it and looking at what's  
7 inside. Detective Forsythe, do you recognize this item?

8 A Yes.

9 Q What is it?

10 A The 9mm shell casing.

11 Q And does it appear to be the shell casing that you  
12 observed on the scene of the Antonio Oliver shooting?

13 A Yes.

14 THE COURT: Why do you think it's the same one?

15 A Because I'm going by the label of the -- that they put  
16 with it, and this is the exact envelope that they put it in at  
17 the crime scene. See it has the date -- it has the date,  
18 shooting, it has Complaint No. -- No. 1, 9mm shell casing, 345  
19 East 21st Street. It's the same envelope that she would put  
20 this one in.

21 THE COURT: Were any other shell casings seized  
22 there?

23 THE WITNESS: No.

24 THE COURT: Next question.

25 MR. BUSSARD: Again, Your Honor, continuing

1 objection.

2 THE COURT: I note your objection. But where are we  
3 with respect to the exhibit, is the government offering the  
4 exhibit?

5 MS. HOFFMAN: Yes, we are.

6 THE COURT: Anything further, Mr. Bussard?

7 MR. BUSSARD: Yes.

8 THE COURT: You have something further?

9 MR. BUSSARD: The same objection.

10 THE COURT: Same objection, but you've already  
11 articulated it; right?

12 MR. BUSSARD: Yes, plus -- may we approach again,  
13 Your Honor?

14 THE COURT: Okay.

15 (Bench conference on the record.)

16 THE COURT: Mr. Bussard.

17 MR. BUSSARD: Your Honor, it becomes she's only  
18 identifying the outside package of this. She can't identify  
19 the actual object that's in there. She didn't do anything to  
20 the object to mark it to identify it, other than the fact it  
21 looks like the same envelope and packaging, so we don't know  
22 it's the same one. All we know is it's the same package.

23 THE COURT: Thank you, Mr. Bussard. I find that the  
24 exhibit's admissible pursuant to Rule 901 B9, which is the  
25 rule that allows a court to rely at the authentication

1 identification stage on regular ordinary reliable processes.  
2 And the detective has testified at some length about how  
3 evidence is gathered from a crime scene, how it is placed in a  
4 discrete envelope, how a particular number is attached to it,  
5 how that evidence is then logged into the Evidence Control  
6 Unit of the police department. And there's nothing to suggest  
7 that something other than that normal operating procedure was  
8 followed here.

9 I'm impressed by the professionalism and sobriety of  
10 the detective and the consistency of her testimony and her  
11 description of how this process operates. It causes me to  
12 have faith that the process was operated as she describes in  
13 this particular instance. And accordingly, I find that a  
14 sufficient foundation has been laid to allow this shell casing  
15 to be admitted as the shell casing, the single shell casing  
16 that was recovered from this particular crime scene. The  
17 objection's overruled.

18 (The following proceedings were had in open court.)

19 THE COURT: Overruled. Next question.

20 MS. HOFFMAN: No further questions.

21 THE COURT: Mr. O'Toole.

22 MR. O'TOOLE: No, sir, no questions.

23 THE COURT: Mr. Bussard.

24 CROSS-EXAMINATION

25 BY MR. BUSSARD:

1 Q Good afternoon, Detective Forsythe.

2 A Good afternoon.

3 Q On January 4th, 2007, you were serving as a detective; is  
4 that correct?

5 A Yes.

6 Q The lead detective that day was David Peckoo?

7 A Peckoo, yes.

8 Q Am I pronouncing it correctly?

9 A Yes.

10 Q When you arrived on the scene, did you arrive with  
11 Detective Peckoo?

12 A No.

13 Q When you arrived on the scene, was law enforcement  
14 already on the scene?

15 A Yes.

16 Q Okay. So I think there was an Officer Taylor, maybe an  
17 Officer Cummings there that day?

18 A I couldn't tell you, sir.

19 Q Okay. You don't recall?

20 A No.

21 Q Okay. But there was law enforcement there that day?

22 A Yes, sir.

23 Q And in the course of your duties, did you also have  
24 occasion to examine some CCTV of that location?

25 A Sir, I wasn't the primary, I don't -- no, I was just



1 called in to secure the crime scene, that was it.

2 Q I'm showing you -- I'm not sure which page it is of the  
3 exhibit, PHSC 12 -- oh, I'm sorry -- it does work?

4 THE COURT: It's working.

5 Q (BY MR. BUSSARD) Can you see that, ma'am?

6 A Yes, sir.

7 Q And there appears to be a space between the blue car and  
8 the car to the left, which is slightly out of view; is that  
9 right?

10 A Yes, sir.

11 Q Do you have any information that there was another car in  
12 that position at one time earlier in the evening?

13 A Sir, I -- I don't have anything -- I don't know.

14 Q And have you had -- were you ever a crime scene tech?

15 A No.

16 Q Before you became a police officer?

17 A No.

18 Q Do you -- did you receive training in crime scene tech?

19 A No.

20 Q Okay. So when you arrive on the scene, were these little  
21 placards already -- little placards 1 and 4 that are in the  
22 picture, were they already there sitting on the ground?

23 A Yes.

24 Q So somebody else other than you had identified this?

25 A The crime scene tech, yes.

1 Q These items?

2 A Yes, and Detective Peckoo.

3 Q And do you know -- but you didn't see him do that?

4 A He was the only one there --

5 Q Law enforcement --

6 A -- from the detective unit.

7 Q I'm sorry, I didn't mean to talk over you.

8 A That's okay. He was the only one there from the  
9 detective unit.

10 Q But there were other police officers there?

11 A Yes, sir.

12 Q Now, it doesn't show up in these photographs, was the  
13 yellow tape put around a larger area?

14 A If it was secured off, it should have been, sir.

15 Q But you don't see it in this --

16 A The photo.

17 Q -- picture?

18 A Right, sir.

19 Q And do you know -- and the purpose of putting the yellow  
20 tape up there is so people don't walk through a crime scene;  
21 is that correct?

22 A Yes, sir.

23 Q And you already indicated that the victim wasn't there,  
24 so there wasn't any way to have an interview with the victim  
25 at this location on 21st Street?

1 A Correct, sir.

2 Q Okay. Do you know if there was cars still going up and  
3 down 21st Street while you were doing your investigation?

4 A No, sir.

5 Q Okay. Was the whole street blocked off?

6 THE COURT: No, you don't know or no, there were no  
7 cars?

8 THE WITNESS: No cars going up and down the street.

9 Q (BY MR. BUSSARD) So the whole block was blocked off?

10 A Yes, sir.

11 Q Do you know how soon before you arrived at the  
12 location -- 21st Street had been blocked off so there would be  
13 no cars going back and forth?

14 A No, sir.

15 Q Okay. So it could be a few minutes, an hour, you don't  
16 know?

17 A I don't know.

18 Q Okay. Now, just to be clear, showing you another page  
19 from PHSC 12, can you see that, Detective?

20 A It's blurry.

21 Q I hope it --

22 A It's --

23 Q I don't know how to make it clear.

24 THE COURT: Almost --

25 Q (BY MR. BUSSARD) There it is. Is that better?

1 A Yes.

2 Q And again, you said you didn't put these little placards  
3 there, somebody else did?

4 A Crime lab techs put placards down.

5 Q And this is a shell casing here?

6 A Yes, sir.

7 Q And looking at that shell casing, is there anything  
8 unique about that shell casing?

9 A No. No, sir.

10 Q Do you have any idea when that shell casing got there in  
11 the street?

12 A No, sir.

13 Q Okay. Could have been there an hour, a day, you have no  
14 idea?

15 A No idea, sir.

16 Q Somebody else made a decision that that was an important  
17 piece of evidence to collect?

18 A Yes, sir.

19 Q Not you?

20 A No.

21 Q Now, looking again at the exhibit of the shell casing,  
22 based on your knowledge, when that item, the shell casing  
23 here -- and the shell casing is what is ejected from a  
24 semi-automatic handgun; is that correct?

25 A Yes, sir.

1 Q So if it's a revolver, I guess, a lot of people know that  
2 as a six-shooter or something in the westerns, that doesn't  
3 eject anything; correct?

4 A Correct, sir.

5 Q So this is from the kind that after it shoots the bullet  
6 out it drops this out.

7 A Yes, sir.

8 Q Or shoots it out, does something to it. After -- when  
9 that comes out, is there anything -- just you looking at this  
10 shell casing, is there anything unique about that shell casing  
11 as opposed to any other shell casing you've seen?

12 A No.

13 Q And when it's collected -- and you said you observed the  
14 crime scene tech actually collect this, do you know who that  
15 crime scene tech was that day?

16 A Andrenna Dimakos.

17 Q And when Ms. Dimakos picked this up off the ground and  
18 dropped it in the envelope like you've testified to, do they  
19 put any unique markings on that to indicate that that's the  
20 one that's -- the one item that was picked up off the ground  
21 or is there an envelope --

22 A That's the envelope right --

23 Q The envelope is the only unique thing?

24 A Yes.

25 Q There's nothing done to the shell casing to identify

1 the -- even a black magic marker of some sort that can be  
2 taken off later?

3 A No, sir.

4 Q So it's all based on, for want of a better word, faith in  
5 the system, that that cartridge stays in that envelope;  
6 correct?

7 A Correct, sir.

8 Q And the object of doing it this way is to try to preserve  
9 evidence; is that right?

10 A Correct, sir.

11 Q In the form -- whatever form it's in when it's  
12 collected?

13 A Correct, sir.

14 Q And just to be clear, you have no idea what happened  
15 before your arrival at the scene of this crime?

16 A No, sir.

17 Q And you have no way of knowing when the crime scene tape  
18 may have been put up to start preventing cars and people  
19 walking through that area, whenever that was put up, you have  
20 no idea?

21 A No, sir.

22 Q And as we sit here, again, just to reiterate, you don't  
23 have a recollection of whether the crime scene tape was  
24 actually put up?

25 A No, sir.

1 Q It's your testimony that it should have been put up?

2 A Correct, sir.

3 Q Okay. But 11 years later, it's not the easiest --

4 A The 24 years I've been in the police department crime  
5 scene tape has always been put up.

6 MR. BUSSARD: I have no further questions,  
7 Your Honor.

8 THE COURT: Mr. Francomano.

9 MR. FRANCOMANO: No questions.

10 THE COURT: Redirect.

11 MS. HOFFMAN: No redirect, Your Honor.

12 THE COURT: Can the witness be excused, Counsel?

13 MR. O'TOOLE: Yes, sir.

14 THE COURT: You may depart, ma'am. Close that  
15 exhibit back up. Perfect. Ms. Powell, will you recover the  
16 exhibit and return it to the government.

17 Next witness.

18 MS. HOFFMAN: Your Honor, may we approach?

19 THE COURT: Yes.

20 (Bench conference on the record.)

21 MS. HOFFMAN: Your Honor, the next witness is  
22 Sandra Bohlen, the firearms examiner, and I just want to make  
23 sure before she goes on that we're going to be in compliance  
24 with your ruling. So what she's prepared to say is that when  
25 she compared X and Y, she was able to determine that there was

1 sufficient agreement to enable her to be reasonably certain  
2 that X was fired using Y.

3 THE COURT: That's compliant.

4 MS. HOFFMAN: Okay. Thank you. Just wanted to make  
5 sure.

6 THE COURT: That's the ruling.

7 (The following proceedings were had in open court.)

8 THE COURT: Government may call their next  
9 witness.

10 MS. HOFFMAN: The government calls firearms examiner  
11 Sandra Bohlen.

12 THE COURT: Please come forward, ma'am, all the way  
13 up here to the front to the witness box. Stop there and turn  
14 and face our clerk.

15 THE CLERK: Ma'am, if you would please raise your  
16 right hand.

17 SANDRA BOHLEN  
18 called as a witness, being first duly sworn, was examined and  
19 testified as follows:

20 THE WITNESS: I do.

21 THE CLERK: Thank you, ma'am. You may have a seat  
22 in the witness box and watch your step. And if you would  
23 please speak directly into the microphone, state your first  
24 and last name and spell your first and last name.

25 THE WITNESS: My name the Sandra Bohlen,



1 S-a-n-d-r-a; last name is spelled B-o-h-l-e-n, Bohlen.

2 THE COURT: B-o-h-l-e-n.

3 THE WITNESS: Yes, sir.

4 THE COURT: Your witness, Ms. Hoffman.

5 DIRECT EXAMINATION

6 BY MS. HOFFMAN:

7 Q Good afternoon. Where do you work, Ms. Bohlen?

8 A I'm actually the supervisor of the firearms laboratory  
9 for the Baltimore Police Department.

10 Q And can you tell the ladies and gentlemen of the jury a  
11 little bit about what your job entails?

12 A Yes. Well, in addition to supervising the firearms unit,  
13 I am also a firearms examiner myself. And that entails  
14 analyzing any firearms evidence that may come into the  
15 laboratory. That may be a firearm itself or it may be fired  
16 ammunition components that we try to determine whether or not  
17 they were fired with the same firearm or not.

18 Q How long have you been employed with the Baltimore Police  
19 Department's Firearms Examination Unit?

20 A Actually with the police department over 27 years and  
21 I've been with the firearms unit for about 23.

22 Q Do you have specialized training that assists you in the  
23 performance of your duties?

24 A Absolutely. It's very extensive training to become a  
25 firearms examiner. I can go over all of that with you, if you

1 like.

2 Q That would be great.

3 A First of all, I have a bachelors of science in biology  
4 from Salisbury University. I've attended numerous armor's  
5 courses for various firearms. I can list all of those for  
6 you. For the Walther P series pistol from Inner Arms; for all  
7 of the Glock pistols from Glock, Incorporated. Excuse me,  
8 apparently I'm losing my voice. From Savage Arms for the  
9 Savage Bolt Action rifles; from Smith and Wesson for the P  
10 series pistols as well as -- I'm sorry, that was Ruger for the  
11 P series pistol as well as the 1200 series shotgun. For Smith  
12 and Wesson for the Sigma series pistol; from Beretta for the  
13 92 and 96 series pistols as well as the 1200 series shotgun.

14 Other courses I've attended are the FBI Gunshot and Gun  
15 Powder Residue course. The IBIS, which is the Integrated  
16 Ballistic Identification System, which is a computer system  
17 that we have within the laboratory course for operation of  
18 that system. Additionally, the ATF Serial Number Restoration  
19 course. I've toured the facilities of various firearms  
20 manufacturers and that's to observe the manufacturing  
21 processes of those manufacturers. I can list those for you as  
22 well, those are Inner Arms, Beretta USA, Mossberg and Son,  
23 Colt, Ruger, Smith and Wesson, Wilson Arms, and also the  
24 Winchester Olin manufacturing facility.

25 I've conducted thousands of hours of microscopic

1 comparisons on fired ammunition components. And finally, I've  
2 testified as an expert well over 100 times in firearms  
3 identification and circuit district and federal court in  
4 Baltimore City.

5 Q Thank you, Ms. Bohlen. And just so you know, there is a  
6 pitcher of water next to you.

7 A I would actually appreciate that at this point.

8 Q I think there are cups there too.

9 A Right here.

10 Q Take your time, please.

11 MS. HOFFMAN: Your Honor, actually, at this point I  
12 would ask that firearms examiner Sandra Bohlen be admitted as  
13 an expert in the field of firearms examination and analysis.

14 THE COURT: Any voir dire?

15 MR. O'TOOLE: No, Your Honor.

16 MR. BUSSARD: Your Honor, no objection subject to  
17 the -- what are the limitations.

18 THE COURT: Yes. Any voir dire?

19 MR. BUSSARD: No, Your Honor.

20 THE COURT: Mr. Francomano.

21 MR. FRANCOMANO: No, Your Honor.

22 THE COURT: Any objection on behalf of Mr. Johnson?

23 MR. ENZINNA: No, Your Honor.

24 THE COURT: On behalf of Mr. Jones?

25 MR. BUSSARD: Again, only subject to what we

1 discussed.

2 THE COURT: And on behalf of Mr. McCants?

3 MR. FRANCOMANO: No, Your Honor.

4 THE COURT: Very well. Ladies and gentlemen, the  
5 witness, Ms. Bohlen, has been offered to you and the Court as  
6 a potential expert witness. An expert witness is a witness  
7 who's allowed to express his or her opinion on those matters  
8 which he or she has special knowledge and training. Expert  
9 testimony is presented to you and the rules permit it, on the  
10 theory that someone who is experienced in the field can assist  
11 you in understanding the evidence or in reaching an  
12 independent decision on the facts.

13 We permit expert testimony on topics where the  
14 regular ordinary juror probably lacks the technical or  
15 specialized knowledge or education or experience to on their  
16 own be able to assess the evidence independently. So expert  
17 witnesses are permitted in those special circumstances where  
18 the Court determines that the jury would probably be assisted  
19 in their consideration of the evidence by the expertise that  
20 the expert can offer.

21 Again, an unusual circumstance with respect to  
22 expert witnesses is that they are permitted to provide their  
23 opinion with respect to certain matters that might be relevant  
24 to the proceedings in ways that regular lay witnesses are not  
25 permitted to provide an opinion. In weighing an expert's

1 testimony, you should consider the expert's qualifications,  
2 his or her opinions, his or her reasons for testifying, as  
3 well as all the other considerations that ordinarily apply  
4 when you're deciding whether or not to believe a witness's  
5 testimony. You may give the expert testimony whatever weight,  
6 if any, you find it deserves, in light of all of the evidence  
7 in the case.

8           You should not, however, accept an expert witness's  
9 testimony merely because they have been acknowledged by the  
10 Court as an expert. Nor should you substitute it for your own  
11 reason, judgment, and common sense. The determination of the  
12 facts in the case rests exclusively and solely with you. It  
13 is my finding that Ms. Bohlen is qualified to testify as an  
14 expert in the field of firearms -- was it also ammunition?

15           MS. HOFFMAN: Firearms examination and analysis,  
16 which I think includes ammunition and ammunition components.

17           THE COURT: Well, I will expand it to include that  
18 for -- explicitly, firearms examination, ammunition and  
19 ammunition components, examination, and analysis. She's  
20 permitted to testify as an expert in that specified field and  
21 to offer expert opinions within that field. You may  
22 inquire.

23           MS. HOFFMAN: Thank you, Your Honor.

24 Q       (BY MS. HOFFMAN) Ms. Bohlen, I'd like to ask you about  
25 how a cartridge is structured and I believe you may have

1 brought a diagram with you; is that right?

2 A I do have a diagram of a cartridge.

3 MS. HOFFMAN: May I approach?

4 THE COURT: Yes.

5 MS. HOFFMAN: I'm going to put it on the screen up  
6 here.

7 THE COURT: Well, let's mark it and it's for  
8 demonstrative purposes only. Any objection to it being  
9 displayed?

10 MR. BUSSARD: We haven't seen it yet.

11 THE COURT: I thought she just showed it to you, I'm  
12 sorry.

13 MR. BUSSARD: I'm sorry, I was looking at --

14 MR. ENZINNA: We have no objection.

15 THE COURT: Any objection?

16 MR. BUSSARD: No objection.

17 THE COURT: Mr. Francomano.

18 MR. FRANCOMANO: No objection.

19 THE COURT: This is not being received in evidence,  
20 but it's permitted to be shown to the jury for demonstrative  
21 purposes to aid the witness in her testimony.

22 MS. HOFFMAN: I'm going to mark it as  
23 Government's Exhibit DEM 11.

24 THE COURT: DEM 11.

25 Q (BY MS. HOFFMAN) Ms. Bohlen, can you see that okay on

1 the screen in front of you?

2 A I can.

3 Q Okay. Thank you. Can you explain to the members of the  
4 jury how a cartridge is structured?

5 A Certainly, so a cartridge is what some people might refer  
6 to as a bullet, mistakenly. A cartridge is unfired  
7 ammunition. It's in its full sense before it's been fired in  
8 a firearm. Sometimes people refer to them as bullets though,  
9 even though they're -- that's not really correct. So a  
10 cartridge is made up of numerous parts. The cartridge case,  
11 which in this diagram is the silver portion to the left, I  
12 think you can see it's -- it's got a label to it. And bear in  
13 mind that this actual diagram is a cutaway, so the left half  
14 would be what you would see, and then if you cut through the  
15 middle of the cartridge, you would see the internal parts of  
16 everything and that's on the right-hand side.

17 So the cartridge case is on the left-hand side. And  
18 it actually holds the bullet, which is the copper colored item  
19 that's loaded down into the cartridge case. It also has  
20 powder within the cartridge. It's actually below the bullet  
21 in the cartridge case. And the cartridge case also has a  
22 primer at the very bottom of it. So those are all the parts  
23 of the cartridge.

24 Q Thank you. Are cartridge cases sometimes referred to as  
25 shells or shell casings?

1 A Yes, they are.

2 Q Can you explain to the jury the difference between a  
3 revolver and a semi-automatic firearm?

4 A Sure. Well, a revolver is what you would typically think  
5 of if you were to watch maybe an old west type movie. A  
6 revolver has what's known as a cylinder in it, which it's  
7 round and the cartridges load in the cylinder. And during  
8 firing the cylinder actually revolves, which is where the name  
9 of the firearm comes from. So each time the trigger is pulled  
10 the cylinder will revolve, allowing the next cartridge under  
11 the hammer to be discharged. Now, what's special about a  
12 revolver is, once you've discharged all of the cartridges, the  
13 cartridge cases remain in that cylinder until you remove them  
14 physically.

15 Now, the other type of firearm is a semi-automatic.  
16 A semi-automatic pistol has an entirely different loading type  
17 of mechanism. It uses what's known as a magazine. And a  
18 magazine is basically a metal column that has a spring inside  
19 of it that the cartridges are loaded, stacked one on another  
20 on top of. The magazine is typically loaded into the grip of  
21 the firearm. And when the slide is pulled to the rear and  
22 then allowed to go forward, it strips one of the cartridges  
23 off into the chamber.

24 When the firearm is discharged, that explosion  
25 causes that slide to move to the rear again, the cartridge



1 case is ejected out of the firearm, which remember as we said,  
2 those cartridge cases remain in the revolver, but they're  
3 ejected out of the semi-auto. When the slide comes back  
4 forward again, if there's more ammunition, it will pull a  
5 cartridge into the chamber again. With each pull it will  
6 either discharge or you run out of ammunition, so.

7 Q Thank you. So when a semi-automatic firearm is fired,  
8 presumably the casings will be ejected somewhere in the  
9 vicinity of where the gun is fired; is that right?

10 A Yes. Without any other external forces involved. They  
11 could be kicked or blown or any numerous number of things.  
12 But yes, if nothing else happens to them, they should be, you  
13 know, fairly close to the discharge.

14 Q Now, you mentioned that you conduct comparisons of  
15 firearms and ammunitions components; is that right?

16 A That's correct.

17 Q And how do you conduct that analysis?

18 A Okay. We should probably talk about firearms  
19 identification at its very base. So firearms identification,  
20 the basis for it is that during the manufacturing of the  
21 firearm, different portions of the firearm receive tool marks  
22 from that manufacturing process. Those tool marks, later when  
23 the gun is assembled and fired, those tool marks can be  
24 actually transferred or imparted onto the different parts of  
25 the cartridge case. The bullet traveling down the barrel will

1 receive tool marks potentially from the barrel when it was  
2 manufactured. And the cartridge case will receive tool marks  
3 from the manufacturer of the breach face and from the firing  
4 pin and other portions of the gun.

5 So we -- that's what we look for, we look for those tool  
6 marks. Microscopic comparisons conducted on a large  
7 comparison microscope that allows us to put two cartridge  
8 cases or two bullets on side by side and that's what we're  
9 looking for when we conduct those comparisons, those  
10 microscopic tool marks, to try to determine whether or not two  
11 cartridge cases or two bullets were fired with the same  
12 firearm.

13 Q Can you explain to the members of the jury what test  
14 firing is?

15 A Yes. Well, we conduct test fires of firearms for  
16 operability, and we also have to conduct that to capture  
17 cartridge -- test fire cartridge cases or test fire bullets  
18 from a particular firearm to be able to conduct that  
19 microscopic comparison between a potential evidence cartridge  
20 case or bullet and the test fired cartridge case or bullet  
21 from a firearm. We have a water tank within the laboratory  
22 that we test fire the firearm into, and then we can collect  
23 the bullets and the cartridge cases.

24 Q So the -- is the ammunition -- are the ammunition  
25 components compared directly to the firearm?

1 A No. No, that's -- there's nothing to compare directly.  
2 So like I said, we have to test fire the firearm to get  
3 something to compare against the cartridge cases and bullets.  
4 So we test fire, you know, a cartridge in the firearm,  
5 retrieve the test-fired cartridge cases to allow us to compare  
6 them to evidence cartridge cases and retrieve the test-fired  
7 bullets to allow us to compare to evidence bullets.

8 Q And you mentioned the word tool marks, can you explain to  
9 the members of the jury what rifling characteristics are?

10 A Yes. So in rifled firearms -- not all firearms are  
11 rifled. The most common example of a non-rifled firearm is a  
12 shotgun, although there are actually some rifled shotguns as  
13 well. Rifling is composed of what's known as lands and  
14 grooves, down the barrel of a firearm. The land is actually a  
15 raised portion within the barrel, and the groove is the  
16 portion that's not raised. Different manufacturers place  
17 different numbers, different sizes of these lands and grooves  
18 within the barrel.

19 And they also have a twist to them. So that twist  
20 actually imparts a spin to the bullet to give it a straighter  
21 trajectory to its target. So if you hear someone say that the  
22 bullet or that gun is six lands and grooves to the right hand  
23 of twist or six right, that's what they're talking about,  
24 they're talking about the rifling within the barrel.

25 Q Now, you mentioned that you use a microscope to try to

1 determine whether certain ammunition components are fired with  
2 a certain firearm. Are you always able to make a conclusion  
3 about the markings on every ammunition component?

4 A No. No, we can't always make a conclusion. Really we  
5 can only say a few things. We can say yes, it was fired with  
6 the same gun; no, it wasn't fired with the same gun --

7 MR. BUSSARD: Objection, Your Honor.

8 THE COURT: Sustained.

9 Q (BY MS. HOFFMAN) And just to be clear --

10 THE COURT: Ladies and gentlemen, the last two  
11 answers that you heard you should strike from your memory. A  
12 notion that the expert can say that the bullet was -- the  
13 round was fired with the same gun, that's ordered stricken.  
14 Next question.

15 Q (BY MS. HOFFMAN) Ms. Bohlen, can you ever tell with 100  
16 percent certainty whether a particular ammunition components  
17 were fired with a particular gun?

18 MR. BUSSARD: Objection.

19 THE COURT: I have to hear the answer.

20 A Because I can't have seen every single cartridge case or  
21 bullet or test-fired cartridge case, then no, not with 100  
22 percent certainty.

23 THE COURT: Overruled. You may inquire.

24 Q (BY MS. HOFFMAN) I believe you were explaining that  
25 there are times when you cannot make a comparison, and why

1 might you not be able to make a comparison?

2 A Certainly items could be damaged, too damaged to be able  
3 to make a conclusion. Also, not all firearms mark very well.  
4 So potentially there may not be enough marks even if the items  
5 aren't damaged to be able to make a conclusion.

6 Q Can you tell the members of the jury what a CC number  
7 is?

8 A Yes. A CC number stands for central complaint number.  
9 For the Baltimore Police Department the complaint number at --  
10 it's changed recently, but historically, it was composed of  
11 the year, which was two digits, the district, which was one  
12 numerical digit for the district that it occurred in, the  
13 letter of the alphabet of the month, A for January, and then  
14 the number of cases for that month would be the rest of the  
15 number.

16 Q Thank you. And when you examine firearms evidence, does  
17 it come to you with a particular CC number?

18 A Yes, it does.

19 Q And is that how you're able to determine where it comes  
20 from?

21 A Yes.

22 Q I'd like to ask you about CC number 075A03994, which has  
23 previously been identified as the homicide of  
24 Gregory Rochester.

25 MR. BUSSARD: Objection, characterization.

1 THE COURT: You may approach.

2 (Bench conference on the record.)

3 THE COURT: Ms. Hoffman, refresh my memory about how  
4 that number was characterized by the homicide of  
5 Mr. Rochester.

6 MS. HOFFMAN: It was actually Detective Lloyd, I  
7 think, who testified to that. So I can have her -- I can put  
8 something in front of her and have her explain that herself if  
9 that's better.

10 MR. BUSSARD: Well, it was the way it came out. It  
11 said "and is this the murder of," it should be the number  
12 associated with the investigation of the murder.

13 MS. HOFFMAN: Oh, yeah.

14 THE COURT: That's fair. Rephrase your --  
15 sustained, rephrase your question.

16 (The following proceedings were had in open court.)

17 THE COURT: Sustained. You may rephrase your  
18 question.

19 Q (BY MS. HOFFMAN) Ms. Bohlen, were you asked to examine  
20 firearms evidence connected to the CC number associated with  
21 the homicide of Gregory Rochester?

22 A Could you --

23 MR. BUSSARD: Objection, Your Honor.

24 THE COURT: Sustained. You can rephrase.

25 Q (BY MS. HOFFMAN) Ms. Bohlen, I'd like to show you

1 Government's Exhibit 25, which has previously come into  
2 evidence and it's been identified as cartridge casings and  
3 cartridge from the scene of the Gregory Rochester homicide.

4 MR. BUSSARD: Objection, Your Honor.

5 THE COURT: Overruled.

6 A Would you like me to open it?

7 Q (BY MS. HOFFMAN) Yes, that would be great. Thank you.  
8 Were you asked to examine this firearm's evidence?

9 A I was.

10 Q Can you tell us what the firearms evidence consists of?

11 A Yes. There are five 9mm cartridge cases and a live  
12 cartridge as well.

13 Q Now, before we get into your analysis, I want to ask you  
14 one more definitional question. Can you explain the  
15 difference between a bullet specimen and a lead fragment?

16 A Sure. So if we look -- let's look back at the diagram of  
17 the cartridge again. So the bullet, like I said, it -- bear  
18 with me because it is cut away, but if you see that the -- if  
19 the bullet were whole, it would be completely covered in that  
20 copper jacket, is actually what that's called, a copper jacket  
21 of material. But inside of that is typically a softer metal,  
22 which composes the core of the bullet. That's typically lead  
23 or like I said, some other soft metal.

24 So when a bullet impacts something, it potentially breaks  
25 apart. We could have a bullet that stays fairly whole and

1 that would be -- what we would have as -- what would be called  
2 a bullet specimen. But if that bullet breaks apart and the  
3 jacket separates, we potentially only have a piece of lead  
4 from that core. And that's what would be considered a lead  
5 fragment. It's typically not much left of it.

6 Q And so when you testified earlier that you're not always  
7 able to make a comparison, are you sometimes not able to make  
8 comparisons when all you have is a lead fragment?

9 A Yes. I mean, if you think about what a lead fragment  
10 actually is, it never even would have come in contact with any  
11 portion of the gun. It was inside the bullet as it traveled  
12 down the barrel.

13 Q Now, you referred a moment ago to the casings being 9mm  
14 caliber, what does the term caliber refer to in relation to a  
15 gun or bullet?

16 A In the most general terms it's the size of it. Firearms  
17 are manufactured to hold basically -- or fire a certain size  
18 ammunition. And 9mm happens to be the size of these.

19 Q All right. I'd like to approach and show you  
20 Government's Exhibit -- well, first of all, I'm going to show  
21 you Government's Exhibit PHE, as in photos of evidence, 25.  
22 What are we looking at here?

23 A Yes, this is a -- that's a photograph of the evidence I  
24 have here.

25 Q Okay. And I'd like to approach now and show you



1 Government's Exhibit No. 23, which has previously been  
2 admitted into evidence as the casing from the scene of the  
3 Antonio Oliver shooting. And feel free to open it up and look  
4 inside. I'm also going to show you on the screen here  
5 Government's Exhibit PHE 24. And what are we looking at  
6 here?

7 A Yes, that's a photograph of the evidence that I have in  
8 my hand.

9 Q Ms. Bohlen, were you asked to conduct a comparison  
10 analysis of this firearms evidence?

11 A I was.

12 Q And did you create a report or reports to document your  
13 analysis?

14 A I did.

15 Q And when you conduct a comparison, do you do that by  
16 yourself or do you have someone else do it with you?

17 A No. We have co-examiner that conducts their own  
18 examination of the evidence. Basically, the only thing that  
19 the co-examiner doesn't do independently would be -- whoever's  
20 the examiner, whoever's case it is, they first receive the  
21 evidence, they mark the evidence, if any evidence needs to be  
22 decontaminated, they do that. They first conduct the  
23 microscopic comparisons, and then the co-examiner conducts  
24 their own microscopic comparisons. Once both conclusions have  
25 been determined and they determine that they agree upon the

1 conclusion, then the initial examiner, which is me in these  
2 cases, writes the reports. And then the co-examiner will  
3 review the reports to ensure that they say in fact what they  
4 want them to say, what was agreed upon from the comparisons,  
5 and they sign the report.

6 Q I'm going to show you for identification only what's been  
7 marked as Government's Exhibit BR 1. Are these the reports  
8 that you authored with respect to this firearms comparison  
9 analysis?

10 A Bear with me, there's a lot of pages here.

11 MR. BUSSARD: Your Honor, can we approach for a  
12 minute while she's examining?

13 THE COURT: Yes.

14 (Bench conference on the record.)

15 MR. BUSSARD: Your Honor, I realize we're at the  
16 stage of only identification, but the word "determined if  
17 matched and fired" is on here and then it goes on to talk  
18 about other matches. There --

19 MS. HOFFMAN: We're not offering it in evidence.

20 THE COURT: You're not going to offer this report.

21 MS. HOFFMAN: In case she needs to refer to it.

22 THE COURT: I can't imagine a scenario in which the  
23 content of this report is coming into evidence. She can  
24 refresh her recollection with it as necessary and she by now  
25 should be aware that any term like "match," "identification,"

1 "same gun," that sort of thing is going to be a problem. All  
2 right.

3 (The following proceedings were had in open court.)

4 THE COURT: You may inquire.

5 Q (BY MS. HOFFMAN) Ms. Bohlen, are these the -- is BR 1  
6 the reports that you authored with respect to this firearms  
7 comparison analysis?

8 A Yes.

9 Q And I'd like to start with Government's Exhibit 25, which  
10 was the five -- what you identified as the five 9mm cartridge  
11 cases and one 9mm cartridge from the scene of the  
12 Gregory Rochester homicide. Can you first start by describing  
13 your analysis and conclusions with respect to just that  
14 evidence?

15 A Yes. So the five 9mm cartridge cases, those were all  
16 microscopically, and the conclusion is, in my opinion, that  
17 the cartridge cases were fired with the same unknown  
18 firearm.

19 Q And you testified earlier that you can never be 100  
20 percent certain; is that right?

21 A Correct.

22 Q And so --

23 MR. BUSSARD: Objection, Your Honor.

24 THE COURT: Sustained.

25 MR. BUSSARD: Can we approach, Your Honor?

1 THE COURT: Yes.

2 (Bench conference on the record.)

3 THE COURT: I'm about to strike her testimony.

4 MS. HOFFMAN: I can just ask her, were you able to  
5 conclude to a reasonable degree of certainty whether they were  
6 fired with the same firearm.

7 THE COURT: That's fine.

8 MS. HOFFMAN: But she has to use the word "same."

9 THE COURT: Yes. Same's not the problem. It's that  
10 it needs to be qualified.

11 MS. HOFFMAN: Right.

12 THE COURT: With the true capability of the  
13 science.

14 MS. HOFFMAN: Right.

15 THE COURT: As determined by the Court, not by  
16 her.

17 MS. HOFFMAN: And I think she --

18 THE COURT: That's what -- that's what her testimony  
19 periodically does not come forth with. So I'll allow you to  
20 lead her and we'll see if you are able to accomplish what  
21 you're trying to achieve through that method. But the  
22 difficulty is that the witness doesn't seem to embrace the  
23 ruling of the Court. And I don't know how else to make it  
24 more clear. We dealt with this on a pretrial basis.  
25 Judge Grimm's opinion has been published. This court has

1 adopted it. It's the law. She doesn't have the freedom, nor  
2 does the government, to try to take the evidence in a place  
3 that's noncompliant with the law.

4 MS. HOFFMAN: And I don't think she intends to. I  
5 think she agrees that you can't be 100 percent certain and  
6 she's trying to figure out a way to say it.

7 THE COURT: Well, not 100 percent certain is not the  
8 standard. The standard is that an expert may be able to say,  
9 at the high water mark, that within a reasonable degree of  
10 certainty, she concludes that the shell casing came from the  
11 same gun. But every time "same" is used, there needs to be --  
12 it needs to be qualified by a reasonable degree of certainty,  
13 reasonable degree of forensic certainty, reasonable degree of  
14 ballistics certainty. And words like "match," "identified,"  
15 those kinds of absolute terms are not appropriate in light of  
16 the foundation. So --

17 MS. HOFFMAN: So each time --

18 THE COURT: It's the Court's determination that the  
19 most efficient way for this issue to be handled, moving  
20 forward from here in these circumstances is, I'm going to  
21 permit the government to lead the witness. The justification  
22 for allowing the leading is that I'm convinced that this  
23 witness personally believes that it is a match and that it is  
24 identified. So there's no danger here that in the  
25 government's leading, that the witness is going to be caused

1 to say something that she doesn't otherwise believe. In other  
2 words, the ordinary danger associated with a leading question,  
3 that is, that the government is actually supplying the answer  
4 to the question, doesn't exist here.

5 There's ample evidence that the witness actually  
6 believes something even beyond what the Court is prepared to  
7 accept. That's why it is an odd circumstance where the  
8 leading of the witness on this narrow question is  
9 non-problematic. Therefore, lead her. Use the standard  
10 yourself, just elicit yes and no answers from her.

11 MR. BUSSARD: With all respect, I respectfully  
12 disagree. I object to leading questions. I understand the  
13 Court's ruling.

14 THE COURT: You have your objection.

15 MR. FRANCOMANO: We join that objection.

16 THE COURT: All counsel object to the leading of the  
17 expert despite the government's -- Court's explanation why  
18 it's being permitted. Those objections are overruled.

19 (The following proceedings were had in open court.)

20 THE COURT: Next question.

21 Q (BY MS. HOFFMAN) Ms. Bohlen, were you able to determine  
22 to a reasonable degree of certainty whether those five 9mm  
23 cartridge cases were fired with the same unknown firearm?

24 THE COURT: That's a yes or no question.

25 A Yes.

1 Q (BY MS. HOFFMAN) Ms. Bohlen, did you also compare the  
2 five 9mm cartridge cases, which are Government's Exhibit 25,  
3 to the one 9mm cartridge case that is  
4 Government's Exhibit 24?

5 A Just to be clear, that's from CC number 073A01853.

6 Q That's correct.

7 A Yes, I did make a comparison.

8 Q Can you tell us whether you were able to -- and again,  
9 I'm looking for a yes or no answer, were you able to determine  
10 to a reasonable degree of certainty whether those -- the  
11 casing from CC number 073A1853 was fired with the same firearm  
12 as the casings from CC number 075A03994?

13 A Yes.

14 Q And were you able to conclude that based on a microscopic  
15 comparison that you described earlier?

16 A Yes. The comparison conducted both by myself and my  
17 co-examiner.

18 Q Did there come a point in time when you were asked to  
19 compare these cartridge casings with test-fired cartridge  
20 casings from an actual firearm?

21 A Yes, there did come a time.

22 THE COURT: You may approach.

23 (Bench conference on the record.)

24 THE COURT: It would be inappropriate for the Court  
25 to weigh into the questioning process with any intention of

1 assisting either party in trying to accomplish their purposes  
2 in the examination that is being conducted. However, the  
3 Court does have a responsibility during the course of a trial  
4 in listening to the questioning that is occurring, to assist  
5 the process from the perspective of the jury in understanding  
6 exactly what is being asked and what is being answered. In  
7 that spirit, I point out to you, Ms. Hoffman, that you have  
8 asked --

9 MR. O'TOOLE: Your Honor, I would just like to say  
10 that I object.

11 THE COURT: I understand. That's why I preceded the  
12 statement with the finding that I've just made, that there is  
13 a responsibility on the part of the Court to ask -- to  
14 highlight those matters where there is simply, created  
15 perhaps, inadvertently confusion in the information that was  
16 being presented to the jury. So the objection is noted and  
17 overruled. Ms. Hoffman, I note that you have asked whether  
18 the expert was able to make the comparison and the expert has  
19 responded that she was. No evidence has been presented though  
20 as to what the result of that comparison was, only whether she  
21 was able to make a comparison. That's pointed out for the  
22 benefit of the jury, that I believe is left hanging in this  
23 circumstance and not understanding what has been presented to  
24 them.

25 MR. ENZINNA: Your Honor, while we're here on this



1 issue, I just want to note the last time we were up here, we  
2 objected to the witness's testimony about the casings coming  
3 from the same firearm and I believe that that testimony was  
4 stricken.

5 MS. HOFFMAN: It's --

6 MR. ENZINNA: I would just note that the last time  
7 we objected up at the bench in response to a response --

8 THE COURT: I remember it.

9 MR. ENZINNA: The bullets came from the same firearm  
10 and I would ask that that testimony be stricken.

11 THE COURT: I understand your position. I would  
12 have granted the motion then. Now too much time has passed to  
13 re -- to return to that subject. It's my finding would simply  
14 re-emphasize something that probably shouldn't have come in,  
15 but wasn't the subject of a motion to strike, an objection was  
16 granted -- or an objection -- yes, was granted but no motion  
17 to strike was made, so none was granted. Now to return to  
18 that would simply confuse the jury. So the request is denied.

19 MR. BUSSARD: Your Honor, I join with the objection,  
20 however, of Mr. Enzinna.

21 THE COURT: About the motion to strike?

22 MR. BUSSARD: Yes.

23 THE COURT: And does Mr. Francomano? All denied.

24 MR. BUSSARD: Can I just have clarification on CC  
25 number ending in 53, is that Oliver?

1 MS. HOFFMAN: Yeah, I can clarify that.

2 MR. BUSSARD: What about 79, then, it was Fenner?

3 MS. HOFFMAN: Fenner is 1479.

4 MR. BUSSARD: 79.

5 (The following proceedings were had in open court.)

6 Q (BY MS. HOFFMAN) Ms. Bohlen, I asked you whether you  
7 were able to determine to a reasonable degree of certainty  
8 whether the 9mm casings from the Gregory Rochester homicide  
9 were fired with the same unknown firearm as the casing from  
10 the Antonio Oliver shooting, but I failed to follow up and ask  
11 you, what was your conclusion, again, to a reasonable degree  
12 of certainty?

13 MR. BUSSARD: Objection, Your Honor.

14 THE COURT: Overruled.

15 A That the five cartridge cases from 075A03994 and 07 --  
16 and the one cartridge case from 073A01853 were fired with the  
17 same unknown firearm.

18 Q (BY MS. HOFFMAN) And when you --

19 MR. BUSSARD: Objection, Your Honor.

20 Q (BY MS. HOFFMAN) And implicit in my question was that  
21 you were able to determine that with a reasonable degree of  
22 certainty; correct?

23 A Correct.

24 MR. BUSSARD: Objection, Your Honor.

25 THE COURT: Ladies and gentlemen, the expert is

1     testifying generally in the field of forensic -- firearms  
2     forensics comparison between ammunition fired from the same  
3     weapon, different weapons, and so forth. It is the Court's  
4     finding and you're required to take this view into  
5     consideration. This is a legal instruction, that the science  
6     with respect to which the expert is testifying is only so  
7     precise. Despite what the expert might testify to, whether  
8     inadvertently or advertently, the science in which she is  
9     engaged is incapable of determining with absolute certainty  
10    that a shell casing or a bullet came from the same gun as some  
11    other shell casing or bullet did. The high water mark of that  
12    science, the best it can achieve, is that an expert can  
13    testify, can find from an examination that they've conducted,  
14    that within a reasonable degree of forensic certainty a shell  
15    casing or the bullet came from the same gun. Within a  
16    reasonable degree of certainty, but not absolute certainty.  
17    The science is not capable of that. And I so instruct you.  
18    Next question.

19    Q     (BY MS. HOFFMAN) Ms. Bohlen, did there come a point in  
20    time when you were asked to compare the cartridge casings  
21    we've been talking about to test-fired cartridge casings from  
22    an actual firearm?

23    A     There was a time, yes.

24    Q     And was that firearm recovered -- was that the firearm  
25    recovered in association with CC number 073C01479?

1 A Yes.

2 Q What kind of firearm was it?

3 A Sig Sauer model P 226 pistol.

4 Q And can you describe your analysis with respect to that  
5 comparison, just the analysis?

6 A Yes. Well, as we discussed before, so we want to compare  
7 cartridge cases to a firearm. So we need to get cartridge  
8 cases from the firearm. So the firearm is test fired to get  
9 those cartridge cases to be able to make that comparison. So  
10 once that's done, then cartridge cases are all marked and that  
11 comparison is conducted on the comparison microscope, evidence  
12 cartridge case to a test-fired cartridge case.

13 Q And were you able to determine to a reasonable degree of  
14 certainty whether the cartridge casings from the  
15 Antonio Oliver shooting, which is CC number 073A1853,  
16 cartridge casings from the Gregory Rochester murder, which is  
17 CC number 075A03994, were fired with the same firearm?

18 MR. BUSSARD: Objection, Your Honor.

19 THE COURT: Overruled.

20 Q (BY MS. HOFFMAN) Associated with CC number 073C01479?

21 A Yes, that's correct.

22 THE COURT: To a reasonable degree of forensic  
23 certainty only?

24 THE WITNESS: To a reasonable degree of certainty.

25 Q (BY MR. MARTINEZ) Was there another firearm recovered

1 associated with that same CC number that you also compared?

2 A There was.

3 Q And what firearm was that?

4 A There was a Taurus revolver, .38 revolver recovered.

5 Q And did you conduct the same analysis with respect to  
6 that firearm?

7 A Yes, I did.

8 Q And what were your conclusions with respect to that  
9 firearm?

10 A Well, in reference to the revolver, if you recall,  
11 typically you may not have cartridge cases to compare and it's  
12 a revolver because they remain in the gun. So in reference to  
13 the comparison for the revolver, it was actually a bullet  
14 specimen that was compared against test-fired bullets from the  
15 Taurus revolver. And the conclusion regarding the bullet  
16 specimen to the gun was that we really couldn't tell. We  
17 couldn't identify or eliminate that bullet as having been  
18 fired with that gun.

19 Q Now, one final question, Ms. Bohlen, do your microscopic  
20 comparisons tell you who pulled the trigger?

21 A Absolutely not.

22 MS. HOFFMAN: No further questions.

23 THE COURT: So ladies and gentlemen, we'll take our  
24 afternoon recess. During this recess do not discuss the case  
25 with anyone. Do not discuss the case even among yourselves.

1 Do not allow yourselves to be exposed to any news articles or  
2 reports that touch upon the case or the issues it presents or  
3 any articles or reports that relate to any of the participants  
4 in case. Avoid all contact with any of the participants in  
5 the trial. Do not make any make independent investigation of  
6 the law or the facts of the case. Do not look up anything on  
7 the internet related to this case or its participants. Do not  
8 consult an encyclopedia or a dictionary. 15 minutes. Please  
9 take the jury out.

10 (Jury left the courtroom.)

11 THE COURT: Ms. Bohlen, you may step down. You're  
12 required to return in 15 minutes. One matter that I want to  
13 address with the government that's been slipping my mind with  
14 respect to these multi-page exhibits, it's not going to work  
15 to have individual photographs that aren't separately marked.  
16 I doubt there's anything you can do about it today. And maybe  
17 you're not going to get into any such exhibits beyond today.  
18 But after today, beginning next week, no more pages that don't  
19 have their own submarking on them. Otherwise, how do we make  
20 a record? We can't say one of the pages in -- you know,  
21 there's no way for the Court of Appeals to make any sense of  
22 that. It's got to be right down to the actual -- the actual  
23 page has got to have an identifier on it.

24 MS. HOFFMAN: We can fix that problem.

25 THE COURT: 15 minutes.

1 MR. BUSSARD: Your Honor, could I just very briefly?

2 THE COURT: Yes. Still on the record.

3 MR. BUSSARD: The Exhibit BR 1, we've had testimony  
4 about the Rochester murder that -- and CC number ends in  
5 994.

6 THE COURT: I think it would also be helpful outside  
7 the hearing of the jury to correlate the Rochester homicide to  
8 the nickname because it's so regularly referred to by that  
9 name, so please use both names. Go ahead.

10 MR. BUSSARD: There's also a reference to the 70.

11 THE COURT: I don't think you heard me,  
12 Mr. Bussard.

13 MR. ENZINNA: Craig Mack.

14 THE COURT: The Rochester a/k/a Craig Mack homicide.  
15 Go ahead.

16 MR. BUSSARD: There's also a reference to --

17 THE COURT: It's Craig not Greg; right?

18 MR. ENZINNA: Craig with C.

19 MR. BUSSARD: There's also a reference to the CC  
20 number ending in 79, which was Fenner, the traffic stop we  
21 heard about earlier today. There was also reference to --

22 THE COURT: The recovery of the firearm.

23 MR. BUSSARD: Yes, reference to the 53 CC number,  
24 the one ending in 53, which is the Oliver shooting that  
25 Detective Forsythe testified about. There's no reference to

1 53, the 53 documents in this Exhibit BR 1, the 94 and 79 but  
2 not the Oliver, so is there another -- another document. Do  
3 you understand --

4 THE COURT: Refresh my memory, 53 is associated with  
5 which incident?

6 MR. BUSSARD: Oliver, the non -- the one  
7 Detective Forsythe testified to --

8 THE COURT: That's a single shell casing, non-fatal  
9 shooting.

10 MR. BUSSARD: Correct.

11 THE COURT: Detective Forsythe.

12 MR. BUSSARD: Yes. And there's been testimony about  
13 that, but in this exhibit, the 53 CC is not -- is not in here,  
14 not in this exhibit.

15 THE COURT: All right. Well, perhaps that's  
16 something you can take up with government counsel at a break  
17 and see if you can't get that sorted out. I think she just  
18 purported to make -- have made a comparison between the single  
19 shell casing that was recovered from the Oliver Street  
20 shooting and offered the view within a reasonable degree of  
21 forensic certainty that that shell casing had been ejected  
22 from the weapon recovered from the car stop at Gay and  
23 Oliver.

24 MR. MARTINEZ: Your Honor, we have the document that  
25 shows all three CC numbers.



1 THE COURT: Out of the BR?

2 MR. MARTINEZ: Out of BR 1.

3 THE COURT: Okay. Well, why don't you show  
4 Mr. Bussard. And I'll see if there's any continuing  
5 controversy when I return to the courtroom. Anything else we  
6 need to address outside the hearing of the jury?

7 MR. MARTINEZ: No, sir.

8 THE COURT: Okay. Who's going to cross-examine the  
9 firearms examiner, are you Mr. O'Toole or you Mr. Enzinna?

10 MR. ENZINNA: We will not.

11 THE COURT: Neither of you will. Mr. Bussard, you  
12 will.

13 MR. BUSSARD: Yes, sir.

14 THE COURT: Mr. Francomano.

15 MR. FRANCOMANO: No, Your Honor.

16 THE COURT: Mr. Bussard, how long do you think?

17 MR. BUSSARD: At most a half hour.

18 THE COURT: About half an hour, so we probably have  
19 time for another witness.

20 MR. MARTINEZ: We have two more.

21 THE COURT: Okay. 15 minutes. Well, now it's ten  
22 minutes.

23 (A recess was taken.)

24 THE COURT: Are we ready for the jury?

25 MR. MARTINEZ: Yes.

1 THE COURT: Let's bring them.

2 (Jury entered the courtroom.)

3 THE COURT: Be seated, please. Ms. Bohlen, you  
4 remain under oath. Mr. Bussard, you may cross-examine.

5 CROSS-EXAMINATION

6 BY MR. BUSSARD:

7 Q Good afternoon, Ms. Bohlen.

8 A Good afternoon.

9 Q When you examined shell cartridge casings -- and I  
10 apologize if I'm not the best with the terminology, but the  
11 casings, and looking at your demonstration here, this would be  
12 the casing?

13 A That's correct, yes.

14 Q Okay. And this down here at the bottom?

15 A Yes. That's the picture without the bullet loaded in it.  
16 Yes.

17 Q And that's the part that on a semi-automatic pistol is  
18 the part that's kicked out; is that right?

19 A Correct.

20 Q For want of a better word, it's ejected?

21 A Ejected out of the firearm, yes.

22 Q So when it's ejected, it hits the street, hits the  
23 sidewalk, hits something?

24 A Yes.

25 Q And the part in a revolver, just to reiterate, this part,

1 this cartridge case, and this -- remain in the revolver; is  
2 that correct?

3 A Yes, until someone actually physically removes them,  
4 yes.

5 Q Now, when -- there's different kinds of identifying marks  
6 that you look for on -- when you get a specimen?

7 A Correct.

8 Q And one of these is what's called a breach face?

9 A Correct.

10 Q And can you just briefly explain, breach face on it  
11 occurs in semi-automatics; right?

12 A No, breach face is pretty much in any firearm.

13 Q Looking at your example again, is the breach face this  
14 part back here?

15 A Actually, the breach face is actually part of the gun,  
16 okay. So when the firearm is manufactured and that breach  
17 face receives those tool marks that we talked about during the  
18 manufacturing process, the breach face is actually the part  
19 that the -- sir, if you'd put the diagram back up we could --  
20 okay. Is actually the portion at the very base of that  
21 cartridge that that's going to come into contact with the  
22 breach face. So the cartridge has been loaded into the  
23 firearm and it's sitting up against that breach face. Okay.

24 Typically there's a hole in the middle of the breach face  
25 that the firing pin is going to protrude through when you

1 discharge the firearm. That's actually going to strike the  
2 bottom portion there of the primer. The primer has a  
3 propellant in it. When that's struck by the firing pin, a  
4 small explosion occurs. That explosion ignites the powder in  
5 the cartridge case and the pressure builds up in the cartridge  
6 case which then sends the bullet down. So when that explosion  
7 occurs, that cartridge case slams up against the back of the  
8 cartridge case, against the back of the breach face. So the  
9 harder metal of the breach face is going to impart those  
10 markings onto that breach face where the primer and the head  
11 portion of that cartridge case.

12 Q And you said it's both in semi-automatic pistols and  
13 revolvers?

14 A It's in every firearm, yes.

15 Q And with regards to the examination you did in CC number  
16 ending in 94 and the examination ending in 53, the  
17 government's counsel was referencing as Rochester or  
18 Craig Mack homicide or the Oliver, do you recall those?

19 A The CC --

20 Q Those two --

21 A By the CC numbers, yes.

22 Q And if there had been a breach face mark left a unique  
23 mark, you would put that in your report; correct?

24 A Well, that's what we look at to conduct our comparisons.  
25 We look at that, we look at potentially firing pin

1 impressions, as well as other markings. So whatever we look  
2 at during our comparison, that's what's -- that's what brings  
3 us to our conclusion.

4 Q And the other mark I think you look for is ejector  
5 mark?

6 A Potentially. Sometimes we may not even have to go that  
7 far if breach face and firing pin marks are, you know,  
8 exceptional.

9 Q Now, these marks -- if it's a used gun, a lot of wear and  
10 tear on the gun or a lot of wear and tear on the ejector or a  
11 lot of wear and tear on the firing pin, do those marks change  
12 over time?

13 A They certainly can over a long period of time or with a  
14 dramatic amount of use, yes, they can potentially change.

15 Q And the same way the mechanism of the pistol itself or  
16 the revolver, that can wear and tear too, that mechanism can  
17 also wear away and change the marks that you are seeing; is  
18 that correct? Am I being clear?

19 A I think what we said to begin with is that through either  
20 potentially, you know, a lot of firing occurring through a  
21 particular firearm, that that could potentially change some of  
22 the marks over time, yes.

23 Q And looking at -- or thinking about the CC number that  
24 ends in 94.

25 A Yes.

1 Q That was the five casings.

2 A Yes.

3 Q Brass cases.

4 A Yes.

5 Q Okay. You identified that as being 9mm?

6 A Correct.

7 Q Casing?

8 And I think there was some reference to the fact that it  
9 was a Luger. I think you mentioned the word Luger?

10 A 9mm Luger is the name of the caliber.

11 Q 9mm Luger is the name of the manufacturer?

12 A No, it's the name of the caliber. 9mm Luger is the name  
13 of the caliber. There's also 9mm Bergmann-Bayard, there's 9mm  
14 Corto, there's Short. Those are names of the calibers.  
15 Typically it's shortened just to 9mm and 9mm Luger is the most  
16 common of the 9mms, but it's full and proper name is 9mm  
17 Luger.

18 Q Is Luger also a manufacturer though?

19 A Luger was a pistol, a German pistol in history, is what  
20 Luger is.

21 Q Now, when you identify something, I think in your reports  
22 you call Q1B and Q1B means -- that means the first  
23 questionable bullet; is that correct?

24 A Yes, question --

25 Q B is for bullet?

1 A Question bullet 1.

2 Q And looking at your diagram, that's the part that  
3 actually gets fired out of the cartridge?

4 A Correct.

5 Q And when it says Q1, that means it's a casing, a question  
6 casing?

7 A Correct.

8 Q So in 94, which has been associated with the  
9 investigation of the Rochester homicide, you had five  
10 casings?

11 A Correct.

12 Q Of Luger style, is that what --

13 A 9mm Luger caliber.

14 Q I don't want to misrepresent it.

15 A The caliber of the cartridge cases was 9mm Luger.

16 Q And is it also accurate that when you first examined  
17 those five, they were from an unknown firearm?

18 A Correct, yes. I had no firearm at the initial  
19 comparison.

20 Q You had no manufacturer of that firearm to go by?

21 A I had no firearm to compare those cartridge cases to  
22 initially.

23 Q So you couldn't look at the casing itself and just say  
24 what kind of firearm?

25 A There are a few firearms that we can generally get an

1 idea what firearm it may be just by class characteristics, but  
2 these cartridge cases did not give us that kind of  
3 information.

4 Q But there came a time when you had a known firearm?

5 A Yes.

6 Q And you test-fired, that's what you spoke about earlier?

7 A Yes.

8 Q And that was consistent with, I believe you said -- that  
9 firearm was a Sig Sauer; is that correct?

10 A Yes, it was.

11 Q And that Sig Sauer was associated with CC number ending  
12 in 79?

13 A 79, yes.

14 Q Now, there was another item in the 79 CC; is that  
15 correct, there was Q3B?

16 A Yes. Well, actually, that's from 94. Q3B is from --

17 Q 94. And there was some similarities to -- that are  
18 consistent with certain types of firearms, but you couldn't  
19 make an identification; is that correct?

20 A Right. 23B, if you recall, we talked about we compared  
21 it to the test-fired bullets from the Taurus revolver.

22 THE COURT: 94 is associated with what?

23 MR. BUSSARD: 94 is associated with the Rochester or  
24 the Craig Mack, the other name used, the investigation of that  
25 murder.



1 THE COURT: When we question and reference the CC  
2 number, let's also reference the broader description so that  
3 it's clear to the jury what it is you're talking about. Next  
4 question.

5 MR. BUSSARD: I'm talking about the Q3B from -- I  
6 believe from the 79 CC number.

7 THE COURT: And the 79 is?

8 MR. BUSSARD: Is the Fenner traffic stop.

9 THE COURT: Thank you.

10 Q (BY MR. BUSSARD) Am I correct, Ms. Bohlen?

11 A Bear with me one second here. No, Q3B is from the 94.

12 Q 94, the Rochester investigation?

13 A The 94. I apologize, I don't know what number is  
14 associated with what. I just know the CC numbers.

15 Q Okay. So you made a finding that there was some  
16 similarities in the rifling?

17 A Right. So --

18 Q That are consistent with the traits of a K1 Taurus  
19 revolver?

20 A So the comparison of the Q3B, we conducted it against the  
21 test fires from the Taurus revolver. We could not identify or  
22 eliminate whether that bullet had actually been fired with the  
23 Taurus revolver. However, it did have similar rifling class  
24 characteristics. So if you remember, we talked about the  
25 lands and the grooves. So what that means is that it had

1 similar number of lands and grooves and the lands and grooves  
2 were similar in size. But again, we could not tell whether  
3 that bullet came from the Taurus revolver.

4 Q So it could have?

5 A It could, it could have. It may have, it may not have.  
6 I can't tell.

7 Q And is it fair to say that looking at the reports that  
8 you prepared in this case that were admitted only for  
9 identification purposes, there's no reference to benchmark or  
10 ejector mark in there, you didn't find that necessary?

11 A There's -- we don't put that in the report. We just put  
12 the conclusions regarding the comparisons in the report.

13 Q So there could have been, but you didn't find them  
14 significant enough to put them in the reports?

15 A In the reports there's no mention of the specifics of the  
16 comparison, merely the conclusion.

17 Q Talking about -- we've talked about something called a  
18 Sig Sauer, Sig Sauer's a manufacturer?

19 A That's correct.

20 Q From another country.

21 A Yes.

22 Q Correct, those guns are imported into the  
23 United States?

24 A That's correct.

25 Q Okay. You can buy a Sig Sauer in a lot of different

1 places; correct?

2 A That's correct.

3 Q Wal-Mart, Dick's, places like that, gun shops --

4 A I'm not sure that Wal-Mart is selling firearms anymore.  
5 But most places that sell firearms, a Sig Sauer should be  
6 available.

7 Q And the other one that you mentioned earlier, Taurus,  
8 Taurus is no -- you can buy that just about --

9 A Yes. Taurus is actually probably easier to get than a  
10 Sig Sauer.

11 Q In fact, you went through a whole list of manufacturers,  
12 it's not many are manufactured in the United States anymore.

13 A That's correct.

14 Q Now, based on your analysis, can you -- of the items that  
15 were presented to you in -- I'm just going to put these on the  
16 screens if that's okay. This is Government's Exhibit 25, do  
17 you recall this package?

18 A Yes.

19 Q Okay. And when you look at this package, you're simply  
20 looking at the CC number; is that correct?

21 A Yes, and it also has a property number as well.

22 Q Okay. You can't tell from that package or even the  
23 contents of what order any of these casings or cartridges that  
24 you're talking about, what order they were fired in, can  
25 you?

1 A No.

2 Q You can't make a determination even when they were fired,  
3 can you?

4 A No, I can't.

5 Q And the same with this exhibit, which is  
6 Government's Exhibit 23. And do you see that?

7 A Yes.

8 Q And the same questions regarding that, you are simply  
9 identifying the objects in the package from looking at the  
10 package number, the CC number?

11 A Yes.

12 Q And you have no idea what it's gone through to get into  
13 your hands, other than it was submitted to the firearms  
14 examiner?

15 A Correct. It's submitted under a property number and a  
16 complaint number to us.

17 Q This is Government's Exhibit PHE 24, which I'm putting up  
18 on the screen. And I think you identified this as related  
19 to -- this is a CC number, although the CC is not there. Is  
20 that the CC number?

21 A Yes, that's the CC number.

22 Q Where my pen is. Okay. And this was one cartridge;  
23 correct?

24 A Cartridge case.

25 Q Case, excuse me. And you cannot tell by looking at that

1 when that was fired, can you?

2 A No, I can't.

3 Q Can cartridge casings sometimes, if they're on the street  
4 and subjected to the environment, can change over time;  
5 correct?

6 A Well, they tend to oxidize. I can say that typically if  
7 we see that sort of oxidation, just like anything that gets  
8 left out in the weather for any amount of time. You can kind  
9 of tell that it's been out there for a while. Typically, if  
10 we note any kind of oxidation like that on the metal of the  
11 cartridge case, we would note that in the report.

12 Q But by the same token, you can't tell if it was fired at  
13 4:00 o'clock in the afternoon versus 8:00 o'clock?

14 A Absolutely not, no.

15 Q And if it passed through -- talking about bullets for a  
16 moment, I'm showing you Government's Exhibit PHE 25. This is  
17 a bullet; correct?

18 A That's a --

19 Q Is it showing up on the screen?

20 A It appears to be a cartridge.

21 Q Cartridge, yes, which to a laymen is a bullet?

22 A That's not -- right, but that's a live ammunition.

23 Q And if that was -- if that had passed through wood for  
24 instance, if it was -- this is a live one, but say you get a  
25 bullet that passes through something, does it necessarily

1 leave marks on it, say a piece of wood?

2 A Would the wood leave marks on it?

3 Q Yes.

4 A I don't know about marks, but it would certainly damage  
5 it to the extent that it may not be of any value to us.

6 Q On the same --

7 THE COURT: What would damage what; the wood would  
8 damage the bullet, or the bullet would damage the wood?

9 THE WITNESS: Well, both. Both for sure.

10 THE COURT: What are we talking about?

11 THE WITNESS: He asked if the wood would leave any  
12 marks behind on the bullet. Potentially, yes. And it could  
13 very much so damage the bullet should that occur.

14 Q (BY MR. BUSSARD) I'm sorry, didn't mean to speak over  
15 you. When -- and I hate to be real raw about this, but when a  
16 bullet passes through a human body, for instance, does it  
17 leave any trace evidence on that bullet?

18 A It potentially can, yes.

19 Q And as a firearms examiner, that would be something that  
20 you would look for?

21 A Yes. If there was any visible evidence, we have the  
22 trace laboratory would come and take a sample from the bullet.  
23 Otherwise, we decontaminate the bullets before we handle  
24 them.

25 Q Does that mean radiating them or dipping them in a

1 solution?

2 A Yeah, soaking them in a 10 percent bleach solution.

3 Q Based on your numerous years of experience as a firearms  
4 examiner, do you know whether in fact the Office of the Chief  
5 Medical Examiner cleans the bullets when they find them?

6 A I really do not know that.

7 Q And do you ever have any questions when you've had to ask  
8 whether in fact there's trace evidence on it -- is that the  
9 person -- you make the decision?

10 A I'm not sure I understand your question.

11 Q Okay. Let me go back. You receive a single bullet and  
12 it came from the Office of the Chief Medical Examiner.

13 A Yes.

14 Q And when you're doing the microscopic examination, if you  
15 see something on the bullet, the cartridge.

16 A It would have to be before we conducted the microscopic  
17 comparison if it was something that we thought was of value  
18 for trace, because before we conduct our microscopic  
19 comparison, we're decontaminating it.

20 Q So that would take away, clean everything off of those  
21 cartridges?

22 A Yes.

23 Q Anything you are looking at; correct?

24 A In terms of biohazardous -- potential biohazardous  
25 materials, yes.

1 Q And showing you Government's PHE 25, when you received  
2 these, do you know whether or not they've been cleaned before  
3 you get them?

4 A I don't know that.

5 Q Decontaminated, I think was your word?

6 A I don't know that, and because I don't know that, we  
7 typically decontaminate ourselves so that we know that we can  
8 safely handle.

9 Q Do you know if they've ever -- they've already been  
10 subjected to fingerprint analysis?

11 A I --

12 Q I'm just asking if you know.

13 A I don't know specifically about these. Typically if our  
14 mobile unit would recover them, they would fingerprint them.

15 Q And would you know also if they've been subjected to DNA  
16 analysis?

17 A I do not know that.

18 Q Do you have any information as to where the items are --  
19 when you receive a package like Government's Exhibit 25, do  
20 you ever get a fact scenario of how they were located, how the  
21 items in these packages were --

22 A No. There may be -- the evidence inside that evidence  
23 envelope, a smaller coin box envelope for the individual  
24 pieces, it may have a description of where the person  
25 recovered it from. And typically they label it with some sort



1 of letter or number for their own purposes.

2 Q Is that an important thing for a firearms examiner to  
3 know whether it was found in the street or found in a pocket  
4 or found --

5 A It's not for us at all.

6 Q You don't care?

7 A I really don't.

8 Q The only thing you can really testify about is that a  
9 cartridge had been fired; correct, or not fired, and then it  
10 would go from there?

11 A Yes, and potentially how they relate to each other.

12 Q But if you got a cartridge and it hadn't been fired, it  
13 just would not have breach mark --

14 A Right, there would be no breach face marks on it.

15 Q There would be no ejector mark on it?

16 A It could potentially have an extractor mark on it, had it  
17 been in the gun and extracted from the gun without having been  
18 fired. It's usually unlikely, but sometimes that is  
19 possible.

20 Q And again, it wouldn't have that firing pin --

21 A Correct.

22 Q -- mark --

23 A That's correct.

24 Q -- if it had not been fired.

25 A That's correct.

1 Q In your examination of the items in G -- or  
2 Government's 25, the one that's on the screen --

3 A Yes.

4 Q -- and Government's 23, did you find any trace evidence  
5 on any of these items?

6 A No, I did not.

7 Q Okay. And trace evidence, I mean, would be human tissue,  
8 blood --

9 A Right. Typically, any time we see fibers or any kind of  
10 foreign material that may be on the bullet, is when we're  
11 going to call the Trace Analysis Unit.

12 Q And if you had --

13 A And no, I didn't -- did not see anything like that on  
14 these items.

15 MR. BUSSARD: No further questions, Your Honor.

16 THE COURT: Mr. Francomano.

17 MR. FRANCOMANO: No questions, Your Honor.

18 THE COURT: Redirect.

19 MS. HOFFMAN: No redirect, Your Honor.

20 THE COURT: May the witness be excused?

21 MR. FRANCOMANO: Yes, Your Honor.

22 THE COURT: Mr. Bussard.

23 MR. BUSSARD: Yes, Your Honor.

24 THE COURT: Ma'am, you may be excused. You may  
25 depart.

1 THE WITNESS: Thank you.

2 THE COURT: Next witness.

3 MS. HOFFMAN: The government will call  
4 Detective Ryan Reass.

5 THE COURT: Ryan Reass. Please come forward, sir,  
6 all the way to our witness box stand there and face our  
7 clerk.

8 THE CLERK: Sir, raise your right hand.

9 DETECTIVE RYAN REASS  
10 called as a witness, being first duly sworn, was examined and  
11 testified as follows:

12 THE WITNESS: I do.

13 THE CLERK: Thank you, sir. You may enter the  
14 witness box and watch your step. And if you would please  
15 speak directly into the microphone, state your first and last  
16 name and spell your first and last name.

17 THE WITNESS: Ryan Reass, R-y-a-n, R-e-a-s-s.

18 THE CLERK: Thank you.

19 THE COURT: R-e-a-s-s.

20 THE WITNESS: Yes, sir.

21 THE COURT: Thank you. Your witness, ma'am.

22 DIRECT EXAMINATION

23 BY MS. HOFFMAN:

24 Q Good afternoon, Detective Reass, where are you  
25 employed?

1 A With the Baltimore City Police Department.

2 Q And what's your rank and position?

3 A I'm a detective and I am currently assigned to the  
4 Homicide Unit.

5 Q How long have you worked for the Baltimore Police  
6 Department?

7 A I have 16 years complete.

8 Q And how long have you worked for the homicide unit?

9 A Approximately five years.

10 Q Can you walk us through the various positions you've held  
11 with BPD?

12 A Yes. After I got out of the academy, the police academy,  
13 I went to the Northern District where I did patrol. After  
14 patrol, I was signed to what is called a District Flex Unit,  
15 basically don't handle any 911 calls but do regular street  
16 enforcement. From there, I went to the Homicide Operations  
17 Unit. I was there for about a year. And then I left and went  
18 to the Eastern District, District Detective Unit, where I was  
19 first assigned to aggravated assaults and then to nonfatal  
20 shootings. From there, I left and went back to the Homicide  
21 Unit where I've been for the last five years.

22 Q Thank you. I want to direct your attention to May 9th of  
23 2008. Where were you working at that point?

24 A I was assigned to the Eastern District Detective Unit.

25 Q And did there come a point in time on that day when you

1 were asked to respond to the scene of a cutting?

2 A Yes.

3 Q What time of day did you get that request?

4 A I believe it was around 5:30 in the evening.

5 Q And where were you asked to go?

6 A The -- I believe the call came out from the 2400 block of  
7 Lock Raven.

8 Q And did you respond there?

9 A Yes.

10 Q And was the victim present when you arrived on the  
11 scene?

12 A From my recollection, the victim was being attended to by  
13 an ambulance, which time I'm not going to interfere with that,  
14 and then being transported to Johns Hopkins Hospital.

15 Q And did you locate the crime scene?

16 A The crime scene was located in the 2400 block of  
17 Greenmount Avenue, right around the corner.

18 Q Were you eventually able to identify the victim?

19 A Yes.

20 Q Who was it?

21 A His name is Jerome Brice.

22 Q And how old was he?

23 A I believe he was 13.

24 Q Were there photographs taken of the crime scene?

25 A Yes. The crime lab tech was ordered and crime scene

1 photos were taken.

2 Q And did you eventually respond to the hospital where  
3 Mr. Brice was being treated?

4 A Yes.

5 Q Were there also photographs taken of Mr. Brice's injuries  
6 at the hospital?

7 A Yes.

8 MS. HOFFMAN: Your Honor, may I approach?

9 THE COURT: Yes. Counsel.

10 (Bench conference on the record.)

11 THE COURT: Show me the ones you want to use.

12 MS. HOFFMAN: PHCS 11-1, PHCS 11-2, PHCS 11-3, PHCS  
13 11-4, PHCS 11-5, PHCS 11-6, PHCS 11-7.

14 THE COURT: PHCS 11-1.

15 MR. ENZINNA: No objection.

16 MR. BUSSARD: No objection.

17 MR. FRANCOMANO: No objection.

18 THE COURT: PHCS 11-2.

19 MR. O'TOOLE: No objection.

20 MR. BUSSARD: No objection.

21 MR. FRANCOMANO: No objection.

22 THE COURT: PHCS 11-3.

23 MR. FRANCOMANO: No objection.

24 MR. BUSSARD: No objection.

25 MR. O'TOOLE: No objection.

1 THE COURT: PHCS 11-4.

2 MR. FRANCOMANO: No objection.

3 MR. BUSSARD: No objection.

4 MR. O'TOOLE: No objection.

5 THE COURT: PHCS 11-5.

6 MR. FRANCOMANO: I'm just going to object 403(b). I  
7 believe that it's more prejudicial than probative. The  
8 detective can testify as to where he was injured.

9 THE COURT: The photograph is not gruesome. It  
10 depicts an injury to the left cheekbone and I'm not even sure  
11 what is depicted in the area of the left armpit. I'm not even  
12 sure that's an injury.

13 MS. HOFFMAN: No, I think that's just medical  
14 tape.

15 MR. MARTINEZ: Or a crease --

16 THE COURT: A crease with hair, is what it looks  
17 like to me.

18 MS. HOFFMAN: Oh, sorry.

19 THE COURT: So I find nothing prejudicial from the  
20 standpoint of it being unduly gruesome or anything along those  
21 lines. The objection's overruled and provided an appropriate  
22 foundation is laid, PHCS 11-5 will be admitted. PHCS 11-6.

23 MR. FRANCOMANO: Same objection.

24 THE COURT: First of all, let's get oriented as to  
25 the anatomy here.

1 MS. HOFFMAN: That's his arm, left arm.

2 MR. BUSSARD: I think if you rotate to the right,  
3 the other way.

4 MS. HOFFMAN: Yeah.

5 THE COURT: Okay. Yes, we have the upper arm is  
6 depicted, an area of the left humerus extending from the  
7 shoulder to the elbow with lacerations that are small  
8 lacerations and punctures which -- and the lacerations are  
9 gaping with blood stains. Mr. Francomano.

10 MR. FRANCOMANO: Same objection, Your Honor.

11 THE COURT: I don't find this to be unduly gruesome  
12 or prejudicial in that respect and it's reflective of injuries  
13 that were sustained, provided an appropriate foundation can be  
14 laid. PHCS 11-6 will be admitted.

15 MS. HOFFMAN: He had a collapsed lung. That's the  
16 tape that was keeping his lung functioning.

17 THE COURT: Got it. This is PHCS 11-7. It depicts  
18 a close up of a person's body with some injuries apparent with  
19 a special sort of bandage over the top of them, which is  
20 clear, such that you can see through the bandage to see  
21 puncture injuries to a number -- there's some other minor  
22 injuries that are apparent, scrapes, that sort of thing.  
23 Mr. Francomano.

24 MR. FRANCOMANO: Your Honor, the same objection. I  
25 do have a question, if that's an injury or is that a medical



1 procedure that was done?

2 MS. HOFFMAN: Well, I mean, it's both. It's the  
3 injury and then the tape, I believe.

4 MR. FRANCOMANO: No, I'm talking about if the lung  
5 was collapsed, they have to go into the chest cavity. If that  
6 was caused by the hospital, then I object.

7 MS. HOFFMAN: No, he had a collapsed lung from the  
8 stabbing. The hospital treated him for it.

9 THE COURT: We'll have to see what the witness has  
10 to say about what is depicted in the picture. But that -- and  
11 that will figure in the ultimate admissibility of the picture.  
12 Right now I'm ruling on the question of whether it's unduly  
13 gruesome or offensive from the standpoint of 403 and should  
14 not be admitted. I do not so find. I do not find it to be  
15 unduly gruesome or graphic such that it should be barred on  
16 that ground. PHCS 11-7 will be admitted, provided otherwise a  
17 foundation can be appropriately laid.

18 MS. HOFFMAN: Thank you.

19 (The following proceedings were had in open court.)

20 THE COURT: You may inquire.

21 Q (BY MS. HOFFMAN) Detective Reass, we were talking about  
22 photographs of the crime scene. I'd like to start by showing  
23 you Government's Exhibit PHCS 11-1. What are we looking at  
24 here?

25 A That's a copy of the photo card that would have been

1 filled out by the crime lab technician. It contains the  
2 central complaint number that was in reference to the  
3 incident.

4 Q And would you mind reading the central complaint number  
5 for us?

6 A 083E, as in Edward, 4711.

7 Q Going to show you now Government's Exhibit No. PHCS 11-2.  
8 Can you tell us what we're looking at here?

9 A That's the 2400 block of Greenmount Avenue.

10 Q And is this the scene of the -- is this the crime scene  
11 that you responded to?

12 A Yes.

13 Q Going to show you Government's Exhibit PHCS 11-3. What  
14 are we looking at here?

15 A It's also a photo of the 2400 block of Greenmount Avenue,  
16 just from a different angle, the crime scene that I responded  
17 to.

18 Q Going to show you Government's Exhibit No. PHCS 11-4.

19 A Photographs of blood spatter.

20 Q And was the blood spatter located at the crime scene?

21 A Yes, on the 2400 block on the sidewalk.

22 Q Now, you said you also responded to the hospital where  
23 Mr. Brice was being treated; is that right?

24 A That's correct.

25 Q And did you have a chance to observe his injuries

1 there?

2 A Yes.

3 Q I'd like to show you Government's Exhibit No. PHCS 11-5.

4 MS. HOFFMAN: And Your Honor, I'll pause here  
5 because I didn't know if you wanted to give -- okay.

6 Q (BY MS. HOFFMAN) What are we looking at here?

7 A That's a picture of Jerome Brice with a cut to his face,  
8 the left side of his face.

9 Q Going to show you Government's Exhibit No. PHCS 11-6.

10 A That is also Jerome Brice's left arm, also with wounds to  
11 his -- to his left arm.

12 Q And finally, I'm going to show you  
13 Government's Exhibit PHCS 11-7. Can you explain what we're  
14 looking at here?

15 A There are puncture wounds to the left side of his body  
16 around like -- little higher than the abdomen, second one  
17 might be close to the abdomen, both puncture wounds.

18 Q Without telling me what was said, can you tell me, did  
19 you interview Mr. Brice?

20 A Yes.

21 Q And again, without telling me what was said, was  
22 Mr. Brice cooperative or uncooperative during your  
23 interview?

24 A Uncooperative.

25 Q I want to turn back to the 2400 block of

1 Greenmount Avenue. Again, without telling me what they might  
2 have said, did you identify any eyewitnesses to the cutting?

3 A Yes.

4 Q Who did you identify?

5 A A Lillian Scott and Mark Nickelson.

6 Q I want to talk about Lillian Scott. How old was she?

7 A 13 years old.

8 Q Did Ms. Scott agree to participate in an interview with  
9 you?

10 A An interview was conducted with her on the 15th of May,  
11 2008.

12 Q And was that interview with Ms. Scott recorded?

13 A It was.

14 Q Did she complete a photo array during that interview?

15 A She did.

16 Q Going to show you Government's Exhibit PHA 7, which has  
17 already been admitted into evidence. What are we looking at  
18 here?

19 A It's a photographic array.

20 Q Which photographic array is it?

21 A This is the photographic array that I showed to Lillian  
22 Scott on the 15th of May.

23 Q And can you -- first of all, did Ms. Scott pick anyone  
24 out from this array?

25 A Yeah, Ms. Scott picked out photograph No. 2.

1 Q And is that her handwriting underneath the photographs?

2 A Yes.

3 Q Can you read what she wrote there?

4 A Photo No. 2 is known to me as -- and I believe it's  
5 supposed to be Digga, might have been cut off there.

6 Q And for the record can you identify who is pictured in  
7 photograph No. 2?

8 A Marquise McCants.

9 Q Is he seated here in the courtroom today?

10 A He is.

11 Q Can you point him out for the record?

12 A He is sitting at the back table next to counsel with the  
13 red shirt.

14 THE COURT: So reflected.

15 Q (BY MR. MARTINEZ) Is that Ms. Scott's signature at the  
16 bottom of the page?

17 A Yes.

18 Q Flip this over. Did Ms. Scott write comments here in the  
19 box?

20 A She did.

21 Q And what did she write?

22 A Photo No. 2 shows the person who approached and then  
23 attacked Jerome Brice.

24 Q And is that her signature again underneath?

25 A It is.

1 Q Can you read the date there?

2 A It says 5/15/2008.

3 Q Is that your name under the slanted line there?

4 A Yes. And the 14:23 would be the time that it was  
5 signed.

6 Q Did you make any suggestion to Ms. Scott as to who she  
7 should pick out of this photo array?

8 A No.

9 Q Did you make any suggestion to her as to what she should  
10 write in the comments?

11 A No.

12 Q Did you make any threats or promises to induce her to  
13 identify someone?

14 A No.

15 Q Did she complete the photo array freely and  
16 voluntarily?

17 A Yes.

18 MS. HOFFMAN: No further questions.

19 THE COURT: Counsel, you may approach.

20 (Bench conference on the record.)

21 THE COURT: How long is your cross going to take?

22 MR. FRANCOMANO: Couple minutes.

23 THE COURT: Okay. I have a 5:10 meeting, which I  
24 can keep holding for a short amount of time. We also have to  
25 excuse the jury for the weekend. I also have to take up a

1 legal matter with counsel. So I don't want you to refrain  
2 from any examination that you think is appropriate, but here  
3 we go.

4 (The following proceedings were had in open court.)

5 THE COURT: Mr. O'Toole, any cross-examination?

6 MR. O'TOOLE: We have no questions, Your Honor.

7 Thank you.

8 THE COURT: Mr. Bussard.

9 MR. BUSSARD: No questions. Thank you.

10 THE COURT: Mr. Francomano.

11 MR. FRANCOMANO: Yes, Your Honor.

12 THE COURT: You may proceed.

13 CROSS-EXAMINATION

14 BY MR. FRANCOMANO:

15 Q Detective Reass, Mr. Brice never told you Mr. McCants  
16 stabbed him; correct?

17 A Correct.

18 Q And you were at the meeting on August 15th, 2017 -- or  
19 excuse me, on May 15th, 2008 with Ms. Scott; is that  
20 correct?

21 A Yes.

22 Q Okay. And in that meeting she said she didn't actually  
23 see him get stabbed with her own eyes; correct?

24 A I don't recall that. I don't recall that.

25 Q You don't remember?

1 A I don't remember that.

2 Q Okay. Would anything help to refresh your  
3 recollection?

4 MS. HOFFMAN: Objection, Your Honor.

5 THE COURT: Overruled. Would something help to  
6 refresh your recollection?

7 THE WITNESS: Possibly.

8 THE COURT: Like what?

9 THE WITNESS: Transcripts of maybe the taped  
10 statement.

11 MR. FRANCOMANO: Your Honor, if I could approach?  
12 Charging statement.

13 THE COURT: Charging statement.

14 Q (BY MR. FRANCOMANO) Would the general incident synopsis  
15 refresh your recollection?

16 A A transcript of the taped statement would be in more  
17 depth than a synopsis that was put on Lotus Notes.

18 THE COURT: But that wasn't the question. The  
19 question is whether or not -- what's the document called?

20 MR. FRANCOMANO: It's called a general synopsis of  
21 incident.

22 A No, I don't believe that would help me.

23 Q (BY MR. FRANCOMANO) But the taped statement would  
24 refresh your recollection?

25 A I believe so, yes.



1 THE COURT: Okay. You can approach, counsel.

2 MR. FRANCOMANO: I apologize, Your Honor.

3 (Bench conference on the record.)

4 THE COURT: Obviously we don't have enough time to  
5 get it done.

6 MR. FRANCOMANO: No.

7 THE COURT: So we'll have to stop at this point and  
8 resume Monday morning. Well, that's all we need to discuss.

9 MS. HOFFMAN: Your Honor, could I simply note that  
10 whatever Ms. Scott told Detective Reass is hearsay, it's not  
11 admissible.

12 THE COURT: Yes.

13 MS. HOFFMAN: So we object to this line of  
14 questioning.

15 THE COURT: Okay. Noted. I don't think it's ripe  
16 yet. He hasn't asked what Ms. Scott said.

17 MS. HOFFMAN: Well, I think he did ask that.

18 THE COURT: What was the question?

19 MR. FRANCOMANO: That's exactly what I said,  
20 Your Honor. I asked if -- Number one, when they brought in  
21 her statements from 5 -- or excuse me, 5/15/2008.

22 THE COURT: When they brought them in to where?

23 MR. FRANCOMANO: When they brought in her statement  
24 that she wrote on the back of the card.

25 THE COURT: Oh, when the government did, you mean?

1 MR. FRANCOMANO: Yes. They opened the door to  
2 asking about the rest of that interview.

3 MS. HOFFMAN: I don't believe that's right.

4 THE COURT: It brought in her statement.

5 MR. FRANCOMANO: Her statement which she wrote on  
6 the back, what happened at the interview.

7 THE COURT: Right.

8 MR. FRANCOMANO: So at that point they opened up  
9 what happened at the actual interview.

10 MS. HOFFMAN: That was an incident that was already  
11 in evidence. It came in --

12 THE COURT: Hold on, Ms. Hoffman, I'll call on you  
13 when it's your turn.

14 Explain to me the theory, there's a piece of paper  
15 on which she wrote out a statement.

16 MR. FRANCOMANO: Exactly.

17 THE COURT: She acknowledged it yesterday.

18 MR. FRANCOMANO: Correct.

19 THE COURT: She read it into the record, plus the  
20 document itself is in evidence.

21 MR. FRANCOMANO: Right, and I just had the detective  
22 read that hearsay statement.

23 THE COURT: It's not hearsay, it's an exhibit that's  
24 in evidence.

25 MR. FRANCOMANO: It's still -- with the document

1       itself when he read it in, was about the meeting that they had  
2       on May 15th, 2008. I think I'm allowed to go into what  
3       happened at that meeting.

4               THE COURT: Don't shake your head. It's just --  
5       okay. Why are you allowed to go into that in any greater  
6       depth?

7               MR. FRANCOMANO: Number one, Your Honor, I think  
8       because they opened the door to that, and number two --

9               THE COURT: Okay. What do you mean --

10              MR. FRANCOMANO: For completeness. It says on that  
11       document that Mr. McCants -- "I saw Mr. McCants assault  
12       Jerome Brice."

13              THE COURT: Right.

14              MR. FRANCOMANO: For the rest of what he said, I  
15       mean, in that taped statement she doesn't say that. She  
16       doesn't say that she saw him. She saw that they got into a  
17       beef, that they were fighting, nothing about him stabbing him,  
18       so that's why I think we should be allowed to go into it.

19              THE COURT: But he hasn't testified -- what has he  
20       testified about the interview? All he's done is read an  
21       exhibit that's already in evidence.

22              MR. FRANCOMANO: Right.

23              THE COURT: And nothing beyond that has occurred.

24              MR. FRANCOMANO: I understand that, Your Honor. But  
25       that's our position.

1 THE COURT: Overruled. All right. So now where  
2 does that leave us? What did you want to refresh his  
3 recollection about?

4 MR. FRANCOMANO: Then we're done.

5 THE COURT: Yeah. Okay.

6 (The following proceedings were had in open court.)

7 THE COURT: Any further questions, Mr. Francomano?

8 MR. FRANCOMANO: Nothing further.

9 THE COURT: Redirect.

10 MS. HOFFMAN: No redirect, Your Honor.

11 THE COURT: May the witness be excused?

12 MR. FRANCOMANO: Yes, Your Honor.

13 THE COURT: No objection from defense counsel. Sir,  
14 you are excused, you may depart.

15 THE WITNESS: Thank you, Your Honor.

16 THE COURT: Ladies and gentlemen, we have come to  
17 the end of the trial day and we have come to the end of the  
18 trial week. You'll recall that I previously advised you that  
19 we would not be sitting on Fridays during this trial, so that  
20 means that we will not see each other again until Monday.  
21 Before I give you your instructions again for overnight, let's  
22 just review again what I have told you about what is the  
23 overall schedule of this trial. We will be in session next  
24 week, Monday through Thursday. We will not sit on Friday next  
25 week, and then the following week the Court will not sit. It

1 will not sit on any of the days of that week. The following  
2 week after that, the Court will sit all week. And that is --  
3 someone help me with the dates.

4 MR. MARTINEZ: 18th to the --

5 THE COURT: Begins Monday the 18th. 18th, 19th,  
6 20th, and 21st. And then on Thursday the 21st, the Court will  
7 recess until Tuesday the 2nd of January, when we will then sit  
8 for three days that week, not sit on Friday, and then the next  
9 week after that in January, we will sit for four days.

10 Somewhere in there is the MLK holiday, we won't sit on that  
11 Monday. I forget which of the weeks that falls on, but at  
12 this point the expectation is that we would sit for three  
13 weeks during January and then we would be at the end of the  
14 trial. Just to refresh what I had originally set out so that  
15 you can clear your mind on what the trial is.

16 Ladies and gentlemen, during this three-day recess  
17 do not discuss the case with anyone. Do not discuss it with  
18 your fellow jurors. Do not discuss it with any of your  
19 friends or family members. Do not allow yourselves to be  
20 exposed to any news articles or reports that touch upon the  
21 case or the issues it presents or the participants in the  
22 trial. Avoid all contact of any kind with the participants in  
23 the trial. Do not make any independent investigation of the  
24 law or the facts relevant to the case. Do not conduct  
25 internet searches with respect to the issues presented or the

1 persons participating in trial. Do not consult external  
2 sources such as encyclopedias or dictionaries in reference to  
3 the issues and terms that have been presented to you here.

4 Ladies and gentlemen, as you take a break for three  
5 days, I want to especially emphasize one of the instructions  
6 that I gave to you at the beginning of the trial. And that is  
7 I want you to focus on the importance of keeping an open mind.  
8 The trial is very much underway. You've heard a substantial  
9 amount of evidence at this point, but by no means have you  
10 heard all of the evidence that will be ultimately relevant to  
11 your consideration of the issues that are before you in this  
12 case. So it would be a mistake, it would be wrong to allow  
13 yourself to start reaching conclusions about any of the  
14 matters that are before you.

15 Your responsibility as a juror is to the best of  
16 your ability keep an open mind. Now, I'm not naive. I know  
17 that it's not possible to instruct people, well, don't think  
18 about everything you've seen for the last four days. That's  
19 inevitable that that's going to occur. Do the best to the  
20 extent your mind goes there to remind yourself always that you  
21 have not heard all the evidence in this case. You haven't  
22 heard the final arguments of counsel. You haven't heard the  
23 instructions from the Court on what the law of the case is.  
24 You're very far from being at a point where it's appropriate  
25 to start to reach any sort of conclusion about any matter

1 before you. Process is still very much underway and open.  
2 With those thoughts in mind, I wish all of you a good weekend  
3 and we'll see you -- what's our situation Monday morning?  
4 Let's start at 9:45, 9:45 on Monday morning. The jury will  
5 return then. Please take the jury out.

6 (Jury left the courtroom.)

7 THE COURT: Be seated, please. Couple of matters  
8 that I want to take up. First of all, trial lawyers are high  
9 strung, reactive people by nature, at least that's my  
10 experience. I was a trial lawyer and I would certainly  
11 describe myself that way. Nonetheless, there's a  
12 responsibility that's incumbent upon all of us who are  
13 involved in this process to remember what is appropriate sort  
14 of display and conduct in a courtroom when the case is  
15 underway. Nonverbal communication in the form of facial  
16 expressions and disappointment, agreement, whatever, all of  
17 that should be suppressed. Head shaking, head nodding,  
18 cringing, reactions to rulings that you might be disappointed  
19 in or not agree with, things that you are thrilled with or  
20 happy with, please keep in mind the basic responsibility that  
21 all of us have who are participating in this process to keep  
22 the emotions underground. Do your communicating when it's  
23 your turn to talk, to present evidence, and to argue, but not  
24 otherwise. That's number one.

25 Number two, with respect to those government

1 exhibits, I just want to reiterate what I said, we really need  
2 to have those separately and specially marked so that we know  
3 exactly what we're referring to and so the record is  
4 absolutely clear.

5 The third topic is a legal question that I want to  
6 ask. At the time of the alleged stabbing that we've just been  
7 hearing about and the last witness's testimony, Mr. Martinez,  
8 how old was Mr. McCants, in the government's view?

9 MR. MARTINEZ: 16, I believe.

10 THE COURT: Okay. Is that --

11 MR. MARTINEZ: Wait, 15.

12 THE COURT: 15. And is that assault, alleged  
13 assault, charged as an overt act in furtherance of the  
14 racketeering conspiracy?

15 MR. MARTINEZ: It is.

16 THE COURT: Okay. So there's probably a great  
17 likelihood that you have already looked into the question that  
18 I want to raise with you now, and that is, what does the law  
19 say about a conspiracy that has a long period of running, some  
20 12 years in this case, from 2005 to 2017? What does it say  
21 about the legal culpability in an adult proceeding of an  
22 individual who is alleged to have been a member of the  
23 conspiracy and engaging in overt acts in furtherance of that  
24 conspiracy, both when they were a juvenile and when they were  
25 an adult? And can they be held culpable on the conspiracy



1 charge for those overt acts that they allegedly committed  
2 before they had reached the age of 18?

3 MR. MARTINEZ: So I think there are a number of  
4 important things to point out in response to the Court's  
5 question. First, there is a circuit split -- well, when a  
6 defendant continues to participate in a conspiracy after he's  
7 attained the age of majority, evidence of premajority conduct,  
8 I think is typically admissible. There's a circuit split as  
9 to the scope of the purposes for which premajority conduct is  
10 admissible. Some circuits say that so long as they continue  
11 to participate in the conspiracy after attaining the age of 18  
12 and thereby, for lack of a better term, ratified their  
13 premajority conduct, it all comes in --

14 THE COURT: Substantively on culpability on the  
15 charge as charged.

16 MR. MARTINEZ: Correct.

17 THE COURT: From 2005 to 2012.

18 MR. MARTINEZ: Yes, or to 2017.

19 THE COURT: Excuse me, 2017, I meant the 12 years.

20 MR. MARTINEZ: I believe -- I don't have the case in  
21 front of me, I wasn't prepared to present argument on this. I  
22 believe there's a case from the 4th Circuit called *Spoone*. I  
23 can't remember if it's spelled spoon like the utensil or  
24 *Spoone* with an E on the end. Just working off my memory, my  
25 recollection of what *Spoone* stands for is that in that context

1 where somebody began participating in a conspiracy before 18,  
2 continued participating afterwards, I believe in the  
3 4th Circuit, evidence of premajority conduct comes in to show  
4 their involvement in the conspiracy and when they became  
5 involved.

6 But it's not -- I think a defendant would be  
7 entitled to a limiting instruction, that in terms of  
8 identifying the racketeering predicates that were foreseeable  
9 to a defendant, if, for example, Jerome Brice were murdered.  
10 And murder is a predicate that we charged. The jury couldn't  
11 find murder just based on the Brice incident. But here it's a  
12 stabbing. And we -- there's no predicate crime alleged in our  
13 RICO conspiracy count that would -- stabbing would fall into  
14 that bucket. So from the government's point of view, the  
15 evidence presented regarding Mr. Brice's assault goes to put  
16 Mr. McCants in the conspiracy, which he continued to  
17 participate in after attaining the age of majority. Ms. Scott  
18 did testify and there was testimony about his involvement in  
19 the gang from her. So that's the primary theory of relevance  
20 from our point of view.

21 THE COURT: No problem as far as that goes. But  
22 what about as an overt act in furtherance of the racketeering  
23 conspiracy, is it charged?

24 MR. MARTINEZ: It is.

25 THE COURT: I thought it was.

1 MR. MARTINEZ: Yeah.

2 THE COURT: Okay.

3 MR. MARTINEZ: And I do recall there being some  
4 consultation with the Organized Crime and Gang Section about  
5 that and that they approved it. For what it's worth, I need  
6 to go back and do the legal research and refamiliarize myself  
7 with why. And Ms. Hoffman also points out that, you know,  
8 we're not required to prove any particular overt acts.

9 THE COURT: No. But at the same time, an overt act  
10 that's alleged that is not unlawful conduct that does -- that  
11 is not by law an act in furtherance of the conspiracy, doesn't  
12 belong in the count. Wouldn't you agree with that?

13 MR. MARTINEZ: I'm sorry. An overt act that is not  
14 unlawful --

15 THE COURT: An overt act -- it's really not the  
16 overt act, it's the suggestion of unlawful conspiratorial  
17 conduct on the part of the juvenile before they've reached the  
18 age of 18. There's nothing that violates the adult statute  
19 that is expressed through the accusation of involvement by a  
20 juvenile in the conspiracy. It's hard for me to articulate it  
21 because I think the issue is a subtle one. But I have  
22 concerns about it.

23 MR. MARTINEZ: Well --

24 THE COURT: Mr. Francomano, is this a matter that  
25 you have thoughts about?

1 MR. FRANCOMANO: I do, Your Honor, and I will  
2 thoroughly research it this weekend.

3 THE COURT: Okay. It's -- I've caught everyone  
4 without warning on the issue. I think it's enough to have  
5 sort of raised the issue and I'm not saying that it has to be  
6 resolved with certainty by Monday, but the testimony is  
7 already in the record of the case. It only occurred to me as  
8 it was coming in, and really, frankly, after it had gotten in.  
9 The suggestion from government counsel that it is admissible  
10 on some ground seems likely to me. So the need to purge it  
11 from the record seems extremely unlikely. But I think it's an  
12 open question what use it can be put to and what instructions  
13 might eventually be appropriate around this topic. I would be  
14 interested in seeing your respective submissions on that  
15 question simultaneously before we start on Monday and we'll  
16 continue the discussion after that point. Hopefully this  
17 doesn't require a lengthy brief from either of you, but I'll  
18 read whatever either of you submit. Okay.

19 MR. MARTINEZ: And Your Honor, it just wouldn't  
20 shock me if we get to the end of that research and there is  
21 some agreement that a limiting instruction of some sort is  
22 appropriate and if that's where we wind up, that's what we  
23 will agree to.

24 THE COURT: I think you should look at that  
25 question. I think you should also look at the appropriateness

1 of the allegation being set out as an overt act that was  
2 committed in furtherance of the conspiracy offense. That  
3 wouldn't -- even if it was stricken, that wouldn't necessarily  
4 mean in fact it would bear little relationship to the question  
5 of whether or not it's admissible evidence.

6 MR. MARTINEZ: And when you say stricken, you mean  
7 stricken from the indictment?

8 THE COURT: Yes, not from the case. It could be  
9 admissible for other purposes.

10 MR. MARTINEZ: I understand.

11 THE COURT: I'm just not convinced yet that the  
12 grand jury was on solid legal grounds when they made that  
13 conduct a part of the accusation against, frankly, all of the  
14 defendants, but especially Mr. McCants. That's what I think  
15 needs to be sorted out. Where -- how does all of the proof  
16 here intersect with the law that distinguishes between adults  
17 and juveniles in terms of culpability for criminal conduct?  
18 Okay. Anything else we can productively address before we  
19 adjourn for the weekend, Mr. Martinez?

20 MR. MARTINEZ: Not from us.

21 THE COURT: On behalf of Mr. Johnson?

22 MR. O'TOOLE: No, sir.

23 THE COURT: Mr. Jones.

24 MR. BUSSARD: No, Your Honor.

25 THE COURT: Mr. McCants.

MR. FRANCOMANO: No, Your Honor.

THE COURT: Thank you. We are in recess until Monday morning at 9:45.

(The proceedings were concluded.)

I, Christine Asif, RPR, FCRR, do hereby certify that the foregoing is a correct transcript from the stenographic record of proceedings in the above-entitled matter.

\_\_\_\_\_/s/\_\_\_\_\_  
Christine T. Asif  
Official Court Reporter

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